Urban Planning Updates from the 86th Legislative Session

August 16, 2019
This presentation does not constitute legal advice. Only one of us is an attorney, and odds are she is not your attorney. The topics discussed are new issues facing cities throughout Texas, with perspectives & approaches varying. Consult your community’s legal counsel for advice and applicability to your situation. Lawyers give opinions, and no lawyer’s opinion is a guarantee. Your city attorney gives you an opinion believing it to be a defensible one based on their local knowledge, experience and advocacy.
Key Topics

• SB 2 – Property tax revenue caps
• HB 347 – Essentially the end of annexation
• HB 2439 – Building materials
• HB 3167 – “Shot clock” for processing applications
• Others
  • HB 2840 – Public speaking
  • HB 3314 – Replat reform
  • HB 852 – Permit fees
  • HB 2496 – Historic landmarking
  • SJR 24 – State parks funding
Solving the Important Things

• Electric golf carts approved, though drinking while driving them is still illegal I guess
• Lemonade is now a protected right! #WholesomeContent
• The Bowie Knife is still not the state knife of Texas
• Good doggos get to hang out on restaurant patios
• Wait, were we supposed to do something with plumbers? Nah...
Senate Bill 2 – Tax Rate Caps

- Voter approval required if local government increases property tax revenue more than 3.5%
  - Moody’s: Law will lead to “minimal” homeowner savings and “hurt local governments substantially”
  - De minimis rate: can get some relief if tax rate raises less than $500,000 additional money and city less than 30,000
  - Can “bank” unused increment rate

- Transparency requirements

- Reminder: the “no-new-revenue” multiplier does NOT include new property, so cities are not punished for growing
Senate Bill 2 – Implications

• Planning and engineering departments are typically funded from the general fund, which is most affected by SB 2

• Cities becoming laser-focused on life-cycle costs for capital projects
  • Bad: Or deferring maintenance in order to debt-finance reconstruction

• Cities increasing focus on maximizing development potential due to fiscal return
  • Clashes with NIMBYism and gentrification/commodification likely to increase

• Cities shifting on economic development incentives

• Cities will look towards fees
  • Creation of more Roadway Utility Fees, Drainage Utility Fees and Beautification Fees
  • Shifting planning & development departments into functioning as enterprise funds fully supported by permit fees (see also HB 3167)
House Bill 347 – Annexation... Does This Seem Familiar?

- The natural extension of the 2017 Legislative Session
  - Cities divided into two “tiers” based on population and a few brackets
  - Tier 1 could become Tier 2 by a county petition
- Tier 2 cities had virtually no unilateral annexation authority
  - Petition & election, primarily
- HB 347 essentially makes all cities Tier 2 cities
House Bill 347 – Annexation

• Annexation only allowed:
  • On request of each owner of the land
  • Area with population less than 200 by petition of voters and, if required, petition of landowners
  • Certain narrowly defined types of annexation (city-owned airports, navigable streams, strategic partnership areas, industrial district areas, etc.) can continue using service plan, notice & hearing procedure

• Requires landowner or voter approval of most annexations by any city in Texas

• Texas now one of the only states that denies both state financial assistance AND annexation authority to its cities
House Bill 347 – Implications

• Already seeing significant increases in requests for special taxing districts
  • An opportunity to negotiate development standards by contract? Remember state law limitations...
  • An opportunity to secure financial considerations?
  • Cities adopting ordinances and guidelines for such districts

• Wait... did General Law cities just GAIN some annexation authority?
  • Sort of... Home-Rule and General Law cities are now functionally identical regarding annexation authority & procedures, which simplified some aspects
House Bill 347 – Implications

- In combination with SB 2, cities must rethink their approach to growth management and development policies
  - Make the most of what you have in the city limits
  - Major changes to Comprehensive Plans
  - Cities rethinking major capital projects in support of fringe growth
  - Cities beginning to adopt “urban service boundaries” in plans

- Cities may rethink utility policies
  - Extension outside city limits
  - Charging differential, higher rates to customers outside city limits to address “free rider” and using fund transfers into general fund
  - Contraction and Decertification of CCNs
HB 2439 – Building Materials
HB 2439 – Building Materials

- City cannot adopt regulation that prohibits or limits, directly or indirectly, the use or installation of a building product or material on a building that is allowed in a national model code published within the last three code cycles.

- Cities cannot establish a standard for a building product, material or aesthetic method on a building if more stringent than a standard in a national model code published within the last three code cycles.
HB 2439 – Exemptions

• Program established by a state agency to comply with funding requirements
• Requirement for a building in order to be eligible for windstorm and hail insurance coverage
• An ordinance that regulates outdoor lighting
• A building located in a World Heritage Buffer Zone
• A building located in a Main Street City Program Area
HB 2439 – Exemptions

• A building located in a place or area designated for historical, cultural or architectural importance and significance, if:
  • City is a CLG program participant OR
  • City has an ordinance that meets the CLG requirements

• A building located in a place or area designated for historical, cultural or architectural importance and significance, if designated prior to April 1, 2019

• A building on the National Register, designated as a Recorded Texas Historic Landmark, designated as a State Archeological Landmark, designated as a State Antiquities Landmark
HB 2439 – Reference/Needs

• You cannot simply amend your building codes around this
• Generally, the regulation is prohibited if it prohibits or limits a material
• Look carefully at the definition of a “building” in your ICC codes
• Quick reference for allowed materials in IRC (residential): Table R703.3(1)
• Quick reference for allowed materials in the IBC (commercial): Chapter 14, beginning at 1403.2
• Start thinking about reforms to the Texas Main Street Program – it is currently a competitive process with some subjective criteria in selection for inclusion
  • Needs to be more inclusive & automatic
HB 2439 – Unaffected Regulations

• Material-Agnostic Building Standards
  • Articulation/Relief Standards
  • Roof Pitch
  • Mechanical Screening & Parapets
  • Architectural Feature Requirements (minimum covered porches, awnings, canopies, cornice, patios, balcony, dormers, etc.)
  • Garage setbacks (anti-snout house)

• Sign Regulations, both on a building and freestanding
• Lighting Regulations... with appropriate reference (think glare & nuisance)
• Landscape Standards
• Screening Walls (not considered a “building” under ICC definitions)
HB 2439 – Potentially Unaffected

• PD/PUD regulations on the basis that such creation of a unique district achieves historical, cultural or architectural importance and significance by a city if done prior to April 1, 2019
  • Argument that they are voluntary and thus acceptable
  • Ex post facto issues if they are preempted
  • Problematic if your city requires them for virtually everything
  • Expect them to rarely remain intact based on more recent discussions; depends on content/preamble… talk with your city attorney

• Development Agreements, regardless of date entered and potentially going forward
  • PUD alternative?
  • Not always in the light of day… transparency issue?
HB 2439 – Acceptable Approaches

• Organize your HOAs proactively... not pleasant from implementation/open government standpoint, but it is a way
• Regulate by agreement
  • Chapter 380 economic development
  • Chapter 378 neighborhood empowerment zones
  • Property/sales tax abatements
  • Other grant programs, especially established through economic development or other incentive programs
• Development Agreements
• Strategic Partnership Agreements and Consent Agreements related to special taxing districts (MUDs, etc.)
• Be mindful of hazards of conditional zoning... case law is complex regarding contract zoning...
• Smoke-filled rooms are okay again?
HB 2439 – Acceptable Approaches

• Establish performance-based regulatory incentives
  • Example: Morganton, NC Zoning Ordinance Section 4.3 grants a density bonus
    • [link](https://www.morgantonnc.gov/index.php/component/jdownloads/send/5-city-code-of-ordinances/92-morganton-zoning-ordinance)
  • Award points based on a menu of preferred design/use characteristics, including building materials
    • Grant landscape reductions
    • Increased impervious cover
    • Reduced setbacks
    • Height bonuses
    • Density bonuses
  • Establish a minimum number of points, but be sure project can still be reasonably done without materials
  • When used, require they be memorialized in some type of recorded document that establishes the voluntary nature, what was given and what was received
HB 2439 – Potential Approaches

- Leave your current standards in place, but add clause to suspend until authorized through change in state law or case law
- Regulation of color
  - Becomes complicated if you start getting into prohibitions on painting brick, integral/natural color of masonry
  - Color is generally a dangerous area of regulation
- Alternative permit costs
  - Potential violation of equal protection
  - Potential gift of public funds
  - Is it essentially a back-handed bribe?
  - Better approach is through economic development incentives that rebate the fees
- Expedited review
  - Likely obsolete option following HB 3167
  - Potential for arbitrary & capricious action
HB 2439 – High Risk Approaches

- Any standard that directly references building material
- Some discussion of Fire Marshalls exercising their discretionary safety abilities under IFC
- Deed restrictions (unless you’re Houston or you don’t have zoning)
  - Even then, HB 2439 appears to preempt municipal enforcement of such a restriction
HB 3167 – The “Shot Clock” Bill

I feel the need... the need for speed
HB 3167 – Applicability

• Applies to any “Plan”:
  • Subdivision Development Plan and Subdivision Plan (i.e. “Concept” or “Master” Plan)
  • Subdivision Construction Plan (preliminary/schematic or detailed public infrastructure & utility plans)
  • Site Development Plan and Site Plan
  • Land Development Application

• Applies to any “Plat”:
  • Preliminary Plat
  • General Plan (Houston term for a Master or Concept Plan)
  • Final Plat
  • Replat

• Affects subdivision authority interlocal agreements between city and county

• THERE WILL BE LITIGATION TO ULTIMATELY SORT SOME OF THIS
HB 3167 – Origin & Expectations

• Origin Story (as told by those in favor of the bill)
  • Cities circumventing statutory timelines by denying plats/plans with generic comments rather than specific deficiencies
  • Some cities “slow rolling” plats/plans
  • Truth: This bill appears to make things bureaucratically worse

• Plat Approval Timeline
  • Must approve, approve with conditions or disapprove with explanation within 30 days after the plan or plat is filed.
  • If a city requires both P&Z and City Council, that means within 30 days of P&Z, and then an additional 30 days to City Council
  • It can be extended by 30 additional days by mutual agreement, but a city cannot request that it be waived. It can potentially be waived for a “plan”

• What is a “day?”
  • Government Code is a “Calendar Day”
HB 3167 – Origin & Expectations

• Action or Non-Action
  • If approved, the city shall endorse with a certificate indicating approval (approval block on plat or plan)
  • If failing to act on timeline, shall issue certificate stating the date of filing and that the city failed to act within the period
  • If approving conditionally or disapproving:
    • Written statement of conditions for approval or reasons for disapproval that clearly articulate each
    • Must be directly related to requirements, with a citation, and not be arbitrary
    • Cannot establish a deadline to comply (but vesting language applies)
HB 3167 – Conditional Approval or Denial

- Applicant’s Written Response to Conditional Approval or Denial
  - City must act within 15 days with determination of whether response is adequate
    - All issues addressed?
    - Any NEW issues raised by the written response?
  - What if the response changes the plan or plat in a way that creates new issues?
    - Version 1: the written response/15-day review continues repeatedly until all issues resolved
    - Version 2: the City must disapprove with explanation, restarting the process
HB 3167 – The “Shot Clock” Bill

• What about administrative completeness?
  • Bill does not modify current authority; can require a plat or plan to meet checklist of requirements prior to filing
  • A city can still have a submittal calendar
  • Ch. 245 (vesting statute) can be a tool to mellow the impact of HB 3167 via completeness determination
HB 3167 – General Process Map

Plan/Plat Submission

Completeness Review

Day 1 Filed

Written Response

Conditionally Approve
Conditionally Disapprove
* State & Cite Reasons

Optional

45 Days to Correct (Ch. 245)

Reject
* State Reasons

Disapprove
* State & Cite Reasons

Day 15 Statutory Approval

Day 30 Statutory Approval

Day 30 Agree to Extend

Approve

Conditionally Approve

Issue Appropriate Certificate/Endorsement

End

End

Remember: Plats have a hard 30-day timeline
HB 3167 – What Now?

• Engineering and Utility Departments are more profoundly affected than Planning Departments
  • Subdivision Improvement Drawings are significantly more complex and “thick” than plats

• Every city and county will have an approach that fits their unique needs – YOUR MILEAGE MAY VARY
  • Approach may vary based on whether utilities are city-owned or not
  • Level of comfort with “hard denial”
  • Administrative capacity
  • Performance of development community in jurisdiction

• Internal review deadlines and “speak now or forever hold your peace” expectations with those internal deadlines

• Reality: Submitting engineer has obligation to comply with codes and liability if they don’t; there will be more field changes and change orders that ultimately cost developers MORE money

• City attorneys will vary in local interpretation
HB 3167 – Recommendations

• Review ordinances to determine sufficient grounds are present for conditions/denial (especially under adequate public facilities), and to ensure cross references to criteria manuals are present with enforcement clauses

• Define “filed” in the city’s ordinance
  • Some have suggested a meaning as “the day the administrative review process is finished and the plan or plat is placed on the Commission agenda;” citation is 212.008; this may have risks
  • Link filed date to the date all of the other utilities, engineering, outside agency, supporting reports, etc. are approved

• Codify authority to establish submission calendars

• Develop exemptions to Preliminary Plats as needed (i.e. short form final plats, etc.)

• Keep your zoning site plans (Chapter 211) separate from your subdivision-related applications (Chapter 212)
HB 3167 – Recommendations

• Develop robust completeness checklists, and codify as needed;

• Consider splitting up review elements currently conducted concurrently (supporting studies, other agency approvals like TXDOT, etc.)
  • Example: Require TIA submission & approval prior to site plan or plat
  • Example: Split Preliminary Utility and Infrastructure from Preliminary Plat/Plan, potentially as part of capacity/service determination, and require approval by Engineering prior to Preliminary Plan/Plan submission
  • Example: Require approval of infrastructure construction plans, and their construction/surety, prior to accepting a final plat for approval
  • If concurrent, establish that plan/plat is not considered “filed” until the predecessor elements are approved

• Consider requiring “Letters of Correctness” from all utilities and review entities prior to submission

• Consider Mandatory Pre-Application Conference
  • Identify any waivers, exceptions, oversizing, etc. and shift those into a Developer Agreement that must be completed prior to submission... maybe even negotiate the official filing date as part of it
HB 3167 – Recommendations

• **Maximize delegation of plat and plan approval authority** to city staff as allowed by law

• Recognize increased impact to staff to meet deadlines
  • Eliminate resubmission meetings – the law is framed around written response. Charge for them, if requested
  • Charge for pre-submission meetings – staff time is valuable to meet regulatory deadlines of projects with investor-backed expectations

• Conduct a **cost of service study for the required staffing levels to adequately review** (versus what it takes when rushing & missing items) and meet HB 3167 timelines. Adopt fees that cover the cost of this capacity to administer.
  • Charge each submission/resubmission

• Develop **ROBUST Quality Control Checklists** for each submission type, and require they be completed & stamped by the submitting engineer as part of the completeness review.

• Develop standard form review checklists with fill-in-the-blanks and citations

• **Open question: What are the implications with the State Board of Professional Engineers and Engineering Practices Act?**
<table>
<thead>
<tr>
<th>Item LD.</th>
<th>Item Description</th>
<th>Reference</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>All water and wastewater plans submitted shall include design calculations or be accompanied by a separate Engineering Design Report with design calculations that support the water and wastewater system design as shown. The calculations must be based on the Water and Wastewater Design Criteria as outlined in 2.10.2 and 2.10.3 of the NBU Water Connection Policy. Where deviations from the criteria are required they shall be specifically highlighted. Design calculations must include a summary or exhibit indicating the number of LUEs or the number of water fixture units used to calculate the system demand for the system design as shown.</td>
<td>NBU Water Connection Policy, Section 2.10.2 and 2.10.3</td>
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<td>7</td>
<td>Plans that include fire lines and fire hydrants within City of New Braunfels Fire Department service area must have Fire Department approval. The plans must include evidence or documentation of approval prior to the plans’ final approval.</td>
<td>NBU Water Connection Policy, Section 2.6.1</td>
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<td></td>
</tr>
<tr>
<td>8</td>
<td>Plans must include a note if the proposed improvements are within the Edwards Aquifer.</td>
<td>TCEQ 213.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>One-hundred year flood plain limits shall be shown on plan sheets.</td>
<td>NBU Water Connection Policy, Section 2.6.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Engineer’s dated signature and seal of Professional Engineer licensed in the State of Texas is required on each plan sheet.</td>
<td>NBU Water Connection Policy, Section 2.6.2 and 2.6.3</td>
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</tr>
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<td>11</td>
<td>Engineering firm name and registration number (format F-xxxxx) must appear on each plan sheet.</td>
<td>NBU Water Connection Policy, Section 2.6.1</td>
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</tr>
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<td>12</td>
<td>Date of plans and revisions dates must be provided on each plan sheet. All revision subsequent to initial approval must be adequately annotated.</td>
<td>NBU Water Connection Policy, Section 2.6.1</td>
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</tr>
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<td>13</td>
<td>North arrow and scale must be shown. The standard horizontal scale for plan and profile.</td>
<td>NBU Water Connection Policy, Section 2.6.1</td>
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<td></td>
</tr>
</tbody>
</table>

Design calculations must include a summary or exhibit indicating the number of LUEs or the number of water fixture units used to calculate the system demand for the system design as shown.

Design calculations shall include average day demand, peak hour demand, peak day plus fire and static pressure. The calculations must demonstrate the minimum operating pressure within the system is 60 psi using average day demand. The minimum allowable residual pressure within the system is greater than 35 psi and the maximum velocity in any one pipe is less than 5 fps during peak hour demand conditions.

The calculations must also demonstrate the minimum residual pressure within the system is greater than 30 psi and the maximum velocity in any one pipe is less than 10 fps during peak day plus fire demand conditions. If the static pressure exceeds 60 psi within the system a FIV must be installed.

The minimum water main size is 6 inches in diameter. Looping systems are required for reliability. The maximum length for an 8-inch main is 1320 feet before it must be looped. 12-inch water lines will require a profile drawing. The minimum cover for a water main is 42 inches.
HB 3167 – Private Sector Recommendations

• Set proper expectations for client prior to submittal and emphasize importance of investing in due diligence
• Build contingency into your fee budget, and have conversation with client about likelihood of resubmission fees
• Double-check the initial submittal – two extra hours of QC can save weeks or months
• If the city doesn’t have good checklists, help them to create the checklists
• Turnaround revisions back to city quickly, completely and accurately
HB 3314 – Replat Reform

- Bill sponsored by APA Texas
  - Proof we can get a bill passed... important to know for the future
- Provides an alternative path to eliminate public hearing for replats when no waivers are involved
  - Ministerial
- Alternative path provides notice afterward, and directs recipients towards the ordinances & regulations that resulted in its approval
  - Notice afterward was added by bill sponsor
- Helpful for infill projects
- Helpful for instances in which the replat could be treated as administrative/minor other under regulations, except for the requirement to have a public hearing
Other Bills of Interest

• HB 2840: Public speaking to agenda items
  • Any citizen can demand to stand up and speak on any item, which can make ministerial items a bit more challenging
  • Implications for platting:
    • Can’t really table due to shot clock to allow time to investigate, and can’t verify on-the-fly if there is a valid issue raised
    • Potential for hijacking plat items that are otherwise valid
  • Create item for citizen comments on agenda items at front of meeting (separate from public hearings), and you need to move to top of agenda if they are being put at the end of meeting currently
  • Post a giant sign or include agenda statement that plats are ministerial and MUST be approved if in compliance... call out shot clock bill as well just for fun
Other Bills of Interest

• HB 2496: A city cannot designate a property as a local historic landmark (or district?) unless:
  • The owner consents, and must allow the owner to withdraw at any time during the designation process, OR
  • Approved by ¾ vote of Historic Commission or P&Z, AND ¾ vote of Governing Body

• HB 852: Value is no longer an acceptable basis for residential building permit fee calculation; city cannot require disclosure of value or cost of improvements as condition of permit issuance

• SJR 24: Will Constitutionally eliminate ability for Legislature to divert sporting goods sales tax funds away from the Parks & Wildlife Department and Texas Historical Commission
  • Catching up with the 1993 intent
  • Fund has been looted for other uses in the past
  • Helps with local TPWD park grants and various THC grants; state parks
How Did This Happen?

• Personal professional responsibility to engage – Planners, you have experience & knowledge that obligates you to monitor the changing regulatory climate & educate others
  • 140 days, every other year

• Do not scapegoat or pass the buck to organizations
  • Cities did not show up to testify
  • Planners did not show up to testify
  • Individuals (especially local elected officials) are ALWAYS received better and listened to versus organizations

• Over the next month take the time to reach out to your personal Representatives & Senators. Make relationships - don’t just wring your hands

• APATX is having conversations about hiring professional legislative assistance, similar to other large chapters
Texas Legislative Status Reports

86th Legislature Status Updates and Reports

- Approved bills summary - Final (6/16/19)
- Approved bills summary (not all signed by Governor...yet) (6/2/19)
- Legislative Alert - Subdivision Review Timing (4/7/19)
- Legislative Alert - Building Material Standards (3/17/19)
- 86th Legislature Filed Bills Summary (as of 3/8/19)
Legislative Committee
Texas Chapter/American Planning Association as an affiliate of Texas Municipal League

- Monday, November 12, 2018 - Pre-filing of legislation for 86th Legislature began, 460 bills filed on the first day. The number of city related bills as a percentage of total bills filed has risen every year. Twenty years ago, around 17 percent of bills filed affected cities in some way. By 2017, that percentage had almost doubled to 30 percent. In other words, almost a third of the legislature’s work is directed at cities, and much of that work aims to limit municipal authority.
- Tuesday, January 8, 2019 (1st day) - 86th Legislature convenes at noon;
- Friday, March 8, 2019 (60th day) - Deadline for filing bills and joint resolutions other than local bills, emergency appropriations, and bills that have been declared an emergency by governor; There will be more: legislators can still file bills if they can persuade colleagues to suspend rules on a bill-by-bill basis. In 2017 a total of 401 planning and development related bills were monitored by TXAPA/TML.
- Monday, May 27, 2019 (140th day) - Last day of 86th Regular Session; corrections only in House and Senate and session Ends. In 2017, of the 401 bills tracked, a total of 43 (9%) were either signed by the Governor or were not vetoed and became law. 14 (3% of total) of those bills were bad for cities, and 12 (3%) were good. An additional 16 bills were “neutral” and not determined to be negative.
- Sunday, June 16, 2019. (20th day following final adjournment) - Last day governor can sign, or veto bills passed during regular legislative session. Any bills not signed become law
- Monday, August 26, 2019 (91st day following final adjournment) - Date that bills without specific effective dates (that could not be effective immediately) become law

Following is status of Planning Related Bills and other issues as listed on TML Legislative Reports and/or sent to TXAPA

This document is status of legislation affecting planning, development and growth of cities and comes mainly from Texas Municipal League information with periodic checks by TXAPA members on bill status. Only bills sent to the Governor or signed by the Governor as of 6.16.19 are listed.
<table>
<thead>
<tr>
<th>Contents</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>BILL SEARCH AND STATUS</td>
<td>3</td>
</tr>
<tr>
<td>AFFORDABLE HOUSING</td>
<td>3</td>
</tr>
<tr>
<td>ALCOHOLIC BEVERAGES</td>
<td>3</td>
</tr>
<tr>
<td>ANNEXATION, DEVELOPMENT, STRATEGIC PARTNERSHIP AGMTS</td>
<td>3</td>
</tr>
<tr>
<td>BATHROOMS</td>
<td>4</td>
</tr>
<tr>
<td>BOARD OF ADJUSTMENTS</td>
<td>4</td>
</tr>
<tr>
<td>BUILDING AND FIRE CODES/INSPECTION</td>
<td>5</td>
</tr>
<tr>
<td>CODE ENFORCEMENT</td>
<td>5</td>
</tr>
<tr>
<td>COMPREHENSIVE PLANS</td>
<td>6</td>
</tr>
<tr>
<td>CREDIT ACCESS BUSINESS/PAYDAY/AUTO TITLE LENDING</td>
<td>6</td>
</tr>
<tr>
<td>ECONOMIC DEVELOPMENT/REDEVELOPMENT</td>
<td>6</td>
</tr>
<tr>
<td>EMERGENCY MANAGEMENT/DISASTER RECOVERY</td>
<td>6</td>
</tr>
<tr>
<td>EMERGENCY SERVICE DISTRICTS (ESD'S)</td>
<td>7</td>
</tr>
</tbody>
</table>

TXAPA/TML Planning/Development Legislation Update as of June 16, 2019
BILL SEARCH AND STATUS

Each bill below has a link to the bill as introduced. Just click on the link and it will take you directly to the bill. We will strive to replace the links where a bill is updated in committee. To find out the exact status of a bill or to view amended bills, just click on the link below to “Texas Legislature Online” and enter the bill number as shown in the picture. You can also find out committee agendas and information about individual legislators. https://capitol.texas.gov/
TML legislative information and links can be found at: https://www.tml.org/319/Legislative-Information

AFFORDABLE HOUSING

HB 1215 (Collier) – Low Income Housing Tax Credits: (6/15/19 Vetoed by the Governor) would: (1) provide that the Texas Department of Housing and Community Affairs (“Department”) may require, as part of the threshold criteria under a qualified allocation plan (“QAP”), that a proposed development satisfy certain criteria relating to educational quality specified in the plan; (2) prohibit the Department from adopting a QAP that uses a
Please post questions in the comments. A recording of this webinar will be available next week, and this presentation will be sent out to registered attendees for reference.

Special thanks during the Legislative Session:
Ken Schmidt, AICP
Doug McDonald, AICP
Rep. Romero’s Office
Q&A From Webinar

• Does aesthetic method under HB 2439 include articulation standards, roof pitches, architectural details (such as a prominent entry feature), fenestration, glazing or landscaping?
  • As discussed in the webinar, you should consult your local city attorney for legal advice. From our experience, it appears the general consensus is that articulation standards, roof pitches, glazing and similar architectural details are not affected (they are material-agnostic). You should exercise caution to ensure you have not indirectly prohibited a material. When requiring elements like landscaping & setbacks based upon quality of design/materials, ensure they are structured as an incentive for the desired building design rather than a penalty for undesired design. Incentives can be okay, but penalties are clearly not.

• If we have adopted local amendments, do we need to revise based on HB 2439?
  • This depends on the content of your amendments. Consult your local city attorney.
Q&A From Webinar

- Under HB 2439 can cities adopt minimum standards such as sound attenuation ratings for buildings near airports? Not amending allowed materials, but regulating effectiveness.
  - This appears to relate to issues involving FAA regulations and recommendations. While you should consult your city attorney, this appears to potentially fall under an exemption related to state/federal program requirements. It may also be generally allowable, though you need to consult your building official to better understand whether such efforts might indirectly prohibit certain materials. Your local city attorney should help you navigate this unique issue.

- Does HB 2439 also prohibit regulating intensity of exterior lighting?
  - This has been the subject of much debate, and you should consult your local city attorney. It is our opinion that it does not prohibit regulation of exterior lighting intensity, as such regulations are prerequisite to obtaining IDSA certification. Likewise, the ICC does not speak substantially to lighting as contemplated by most zoning & development regulations. As discussed, it is wise to ensure strong links between your lighting regulations and nuisance-related laws & language.
Q&A From Webinar

• For HB 2439, can cities make amendments to the International Fire Code as opposed to the IBC to address materials?
  • The International Fire Code is part of the International Code Council Suite of Codes, and constitutes a model code as contemplated by this bill. While it can be amended for local needs, the bill makes clear that the city cannot enforce a standard that directly or indirectly limits building materials otherwise allowed. It likewise makes clear that you cannot simply amend away particular undesirable materials. Consult your city attorney.

• Have there been any discussions about how HB 2439 will impact historic preservation requirements?
  • Yes. The bill makes clear that existing regulations can continue provided they comply with the Certified Local Government program. New historic preservation ordinances, however, do not appear to maintain those protections. Read the exemption in the bill closely as applied to your particular circumstances, and consult your city attorney.
Q&A From Webinar

• My city is using an older edition of the ICC Codes, and are currently upgrading to a more recent version. Will HB 2439 prohibit this?
  • It will not prohibit this. You should, however, ensure that your local amendments are consistent with HB 2439. If you stay away from prohibiting/restricting particular building materials, you should be fine. Consult your city attorney as you go through this process.

• Have there been any discussions about how HB 2439 will impact historic preservation requirements?
  • Yes. The bill makes clear that existing regulations can continue provided they comply with the Certified Local Government program. New historic preservation ordinances, however, do not appear to maintain those protections. Read the exemption in the bill closely as applied to your particular circumstances, and consult your city attorney.
Q&A From Webinar

• Does HB 2439 apply to industrial buildings?
  • Yes. Industrial buildings fall under the broad understanding of commercial buildings from a building code perspective. When considering questions like this, consider the deference the bill gives to the model codes and apply the definitions contained in those model codes.

• For HB 2439, are you saying that only an existing building in an area designated for aesthetic significance can be regulated, but not any future building in that area?
  • Consult your local city attorney, but the consensus is that what you state is correct: future preservation districts/landmarks may not have the same material protections as earlier designated properties.
Q&A From Webinar

• Is there any chance HB 2439 or HB 3167 can be thrown out for being too vague and therefore unenforceable?
  • This is an excellent question, and one that will ultimately be determined through litigation. There are certainly more than a few of us that have this mindset. None of us are judges and only one of us is a lawyer, so it remains to be seen how this would play out in the judicial system.

• For HB 2439, what if you give an expedited review, but then they "change" their mind and want a different material?
  • As discussed in the webinar, we do not believe use of expedited review is a sound approach to incentivizing particular building materials. The example you give is but one reason why.
Q&A From Webinar

• Under HB 3167, cities cannot place a time frame for resubmittal. So does a plat review ever expire? Can a developer bring a denied application 10 years later and expect a 15 day turn around?
  • Consult your local city attorney. From our perspective, they can expire if the City has thoughtfully applied Chapter 245 vesting statutes in a way that affirmatively addresses the expiration of dormant projects to include projects in review but not approved.

• Does the word “file” under HB 3167 mean submitted to the Planning Department with a complete package and fee?
  • Consult your local city attorney. From our perspective, we believe cities have latitude to reasonably define what constitutes "filed" under this bill.
Q&A From Webinar

• Under HB 3167, is only one 30-day extension allowed by mutual agreement, or can there be more than one 30-day extension?
  • Consult your local city attorney. The language of the bill, however, seems clear that only one extension can be granted even if both the City and the applicant want more. Development Agreements that prescribe a filing date could be a tool to address this on an individual basis. Conversely, this could simply be a recognition that the applicant has not performed adequate quality control in their submission and are therefore subject to denial. When this occurs, we recommend reminding them that this bill is the cause.

• Does the word “file” under HB 3167 mean submitted to the Planning Department with a complete package and fee?
  • Consult your local city attorney. From our perspective, we believe the City's have latitude to reasonably define what constitutes "filed" under this bill.
Q&A From Webinar

• Under HB 3167, Is it the opinion of the presenters that the addition of "plan" to the bill was directed at Houston, and does it mirror terminology they use for subdivision development?
  • Our perception is that the bill sought to address cities broadly throughout the State of Texas. In fact, Houston was identified as a model for rapid processing by supporters of the bill providing testimony (in contrast to their experiences in other jurisdictions), though this bill appears to create an environment that negatively impacts the praised approaches used by Houston.

• Thoughts on requiring a pre-application meeting as a prerequisite to submittal resulting from HB 3167? If so, does that count as being "filed"?
  • Consult your local city attorney. From our perspective, we believe the City's have latitude to reasonably define what constitutes "filed" under this bill. We do recommend clarifying that such a meeting does not constitute filing.
Q&A From Webinar

• The presentation refers to a completeness review. How long can a completeness review take and what is the related statute?
  • State law establishes a 10-day review period for completeness review. See Chapter 245 of Local Government Code.

• If a City has adopted the 2018 International Building Code, can an applicant request to be reviewed under the 2015 International Building Code as it is a code within the last three cycles based on HB 2439?
  • Consult your local city attorney, but that does not appear to be the case. The bill does not preempt your adopted building codes in their entirety. Chapter 245 also plays a role in this, as life/safety issues like building codes are not subject to vesting.
Q&A From Webinar

• After receiving a response per 212.0095 in HB 3167, a municipal authority or governing body must determine whether to approve or disapprove not later than 15 days after response submitted. Can the PC or City council delegate the authority to approve or disapprove?
  • Consult your local city attorney. This may depend on your exact process. For example, the City Council could "approve with conditions," which presumably would shift confirmation that those conditions have been met to an administrative function at the staff level.

• Under HB 852, does a residential building permit fee include multifamily in the prohibition against valuation-based permit fee calculation?
  • Our understanding is that this only applied to construction of single-family residences. This is based on the bill language referring to a "residential dwelling" in the singular, and multifamily falling under a different building code. We do, however, note that a number of cities have shifted away from valuation-based permit fee calculations for all building permit types. Many have opted for calculations based on square footage and building code occupancy type. Consult your local city attorney.