CITY OF ROCKWALL

CITY COUNCIL MEMORANDUM

PLANNING AND ZONING DEPARTMENT
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TO:	Mayor and City Council
CC:	Rick Crowley, *City Manager* Mary Smith, *Assistant City Manager* Joey Boyd, *Assistant City Manager*
FROM:	Ryan Miller, *Director of Planning and Zoning*
DATE:	July 15, 2019
SUBJECT:	Legislative Update for Planning and Zoning Related Bills

During the 86th Legislative Session several planning and zoning related bills were approved by the legislature that have major impacts to the City's codes. These bills could affect how the community grows and develops in the future. In order to amend the City's ordinances to address the new laws prior to their effective dates (*i.e. September 1, 2019*), City staff has prepared a synopsis of each of the major bills for the City Council's review. In addition, staff has provided a summary of each of the bills' perceived impacts to the City of Rockwall, the actions necessary to change the codes to address the new laws, and several strategies that the City Council may consider when directing staff to make the necessary changes. Staff has also placed the full text for each bill in the attached packet for the City Council's review. At the end of this memorandum, staff has included several questions for the City Council to answer that will assist staff in the update.

Planning Related Bills Approved by Legislature

- *HB347 (Annexation)*: This bill effectively eliminates the City of Rockwall's ability to unilaterally annex property located within the City's Extraterritorial Jurisdiction (ETJ). More specifically, the bill eliminates the *Tier 1* and *Tier 2* distinction for cities and counties, which was created by SB6 during the 84th Legislative Session.

  Effective Date of HB347: May 24, 2019

  What does HB347 mean for the City of Rockwall?

  HB347 restricts the City's ability to unilaterally annex property, and all future annexations in the City will be voluntary to some degree (*i.e. property owner initiated or through an election of all property owners in the proposed annexation area*).

  Strategies or Actions as a Result of HB3167

  There are no strategies or code amendments associated with the implementation of this bill.

- *HB2439 (Building Materials and Methods)*: This bill effectively restricts a City from enforcing or adopting regulations that prohibit or limit -- *directly or indirectly* -- the use or installation of a building product or material in the construction or renovation of a residential or commercial building that is already regulated by a *National Model Code* (*i.e. the International Building Code*). The bill does allow for certain exclusions including:

  (1) An ordinance or other regulation that regulates outdoor lighting for the purpose of reducing light pollution.

(2) A building located in a place or area designated for its historical, cultural, or architectural importance and significance that a municipality may regulate under Section 211.003(b) of the Texas Local Government Code (TLGC) if: [*1*] the municipality is a certified local government, [*2*] the municipality has an applicable landmark ordinance.
(3) A building located in a place or area designated for its historical, cultural, or architectural importance and significance by a governmental entity, if designated before April 1, 2019.
(4) A building listed on the National Register of Historic Places or designated as a landmark by a governmental entity.
(5) A building located in an area designated for development, restoration, or preservation in a Main Street City under the Main Street Program established under Section 442.014 of the TLGC.

In addition, the bill states that the Attorney General or an aggrieved party may file an action in district court to enjoin a violation or threatened violation of Section 3000.002, and that the court may grant appropriate relief.

Effective Date of HB2439: September 1, 2019

What does HB2439 mean for the City of Rockwall?

The language used in HB2439 is broad and is targeted at preempting a City's ability to regulate development through a zoning ordinance. For the City of Rockwall, the bill will restrict the ability to regulate building materials (*i.e. requiring masonry materials*) through the Unified Development Code; however, the exceptions may continue to allow the City to regulate building materials in certain areas. After conferring with the City Attorney, staff believes the bill will continue to allow the City the ability to regulate building materials in the current manner in the City's various overlay districts (*based on Exception #3 above*), the Downtown (DT) District (*based on Exception #5 above*), the Old Town Rockwall (OTR) Historic District and Planned Development District 50 (PD-50) (*based on Exception #2 above*), the City's locally designated landmarks (*based on Exception #4 above*), Planned Development District 32 (PD-32) (*based on Exception #3 above*), and through future Specific Use Permit (SUP) ordinances. There are still some questions as to whether or not the bill will have an effect on the City's existing Planned Development Districts; however, the City Attorney has stated a belief that state law would preempt these ordinances. There is also some ambiguity on if the City will be able to -- *with the owner(s)/applicant(s) permission* -- be able to regulate building materials through future Planned Development Districts. Much of the uncertainty of this bill will be solved when/if a City gets challenged based on their interpretation of the bill. Staff should note that this bill also has implications on the City's ability to adopt local amendments to the International Building Code (IBC).

For the City's future development, this bill has implications associated with:

(1) *Residential Accessory Buildings*. All residential accessory buildings adhering to the size requirements would be permitted to be constructed out of metal.
(2) *Residential Structures*. Mobile and modular homes would be permitted within the City limits in areas that are not listed in the above exceptions. This may also include the Lake Rockwall Estates Subdivision, which has been transitioning largely due to the one (1) time replacement on mobile and modular homes required by Planned Development District 70 (PD-70). Residential structures that represent infill development in areas of the City that are not covered by deed restrictions would be permitted to be built using materials that were not previously permitted in these subdivisions. This could change the established aesthetics in these areas and could have a potential impact on property values. Materials previously prohibited, such as logistics containers, would also be permitted to be used in the construction of new homes.
(3) *Non-Residential Structures*. The City's major roadways are currently covered by the overlay districts, which it appears will be largely unaffected by the requirements of HB2439; however, many of the commercial areas outside of the overlay districts are adjacent to residential subdivisions. Since non-residential structures -- *not situated within the areas listed in the above*

exceptions -- would be exempted from the building material standards, this could mean more metal buildings adjacent to residentially zoned properties.

Strategies or Actions as a Result of HB2439

Based on the approval of this bill staff will be required to amend large portions of the City's Unified Development Code. Through these amendments there are several opportunities or strategies, that the City Council may choose to adopt, which would continue to ensure the City is demanding the highest quality development in lieu of the restrictions of HB2439. Some of these include:

(1) Increasing the anti-monotony standards for residential properties. This is currently being implemented in the City's Planned Development District ordinances and could be implemented in the *General Residential District Standards*.
(2) The use of Specific Use Permits (SUP's) [*which the City Attorney has stated that the City could require building material requirements through*] could be expanded. This could also be reapplied to residential accessory structures (*as was previously done prior to the update of the code by Ordinance No. 18-47*).
(3) Apply the overlay district standards -- *with the exception of the building material standards* -- to all development within the City.
(4) Make it more difficult to obtain variances and exceptions. This could be achieved in several ways including: [*1*] making all variances and exceptions subject to a supermajority vote, [*2*] creating a compensatory requirement whereby in order to request a variance the applicant is required to off-set the variance through a list of compensatory measures (*e.g. increased landscaping, increased setbacks, increased landscape buffers, structure/shared parking -- staff is also exploring if the use of building materials could be incorporated in this section since it would be a voluntary selection by the applicant*), and/or [*3*] reducing the number of exceptions and variances approved.
(5) Increase the landscaping standards and make the overlay district landscape standards applicable citywide. Increase the number of trees required in landscape buffers.

DISCLAIMER: These strategies are not meant to directly or indirectly prohibit the use or installation of a building product or material, but rather ensure high quality development in the City.

Staff should note that any of these measures would be discretionary to the City Council and staff would only pursue these measures at the City Council's direction.

- *HB3167 (Development Applications)*: This bill makes numerous changes to how City's process and approve site plan and platting applications. A summary of the specific implications of this bill are as follows:

(1) Puts a 30-day "shot clock" on the approval of all site plans and plats. For site plans this means that the Planning and Zoning Commission is required to approve, approve with conditions, or deny a site plan application within 30-days of the application being filed. For plats, the Planning and Zoning Commission has 30-days to forward a recommendation to the City Council, which then has 30-days from this action to approve, approve with conditions, or deny the plat.
(2) The 30-day "shot clock" may only be extended by the applicant for an additional 30-days if the applicant requests in writing an extension to the deadline and the municipal authority or governing body approves such extension request.
(3) If a site plan or plat is approved with condition or denied by the municipal authority, staff is required to provide a written letter stating all conditions of approval or the reason for disapproval that clearly articulates each condition or reason for disapproval citing the section of the code or law for which the condition or reason for disapproval originates (*i.e. the conditions cannot be arbitrary*).
(4) If a site plan or plat is approved with condition or denied by the municipal authority, the applicant is permitted to respond to staff's written letter (*required in #3 above*) within an undetermined

amount of time (*i.e. the municipal authority is not permitted to set a deadline*). If the municipal authority receives a response from an applicant, the municipal authority is required to respond no later than 15-days from receipt of the response, stating approval if the response adequately address the issues or disapproval stating the reason for each disapproval.

(5) If a site plan or plat is approved by the municipal authority, the site plan or plat is endorsed with a certificate indicating the approval.

(6) The municipal authority responsible for approving plats or the governing body of the municipality may not request or require an applicant to waive a deadline or other approval procedure.

(7) In a legal action challenging a disapproval of a plan or plat, the City has the burden of proving by clear and convincing evidence that the disapproval meets the requirements of the subdivision platting law or any applicable case law, and the court may not use a deferential standard.

Effective Date of HB3167: September 1, 2019

What does HB3167 mean for the City of Rockwall?

Moving forward HB3167 will not affect the City's platting process, as plats are typically approved with condition within 30-days; however, the City will be required to remove the 30-day waiver that is currently on the development application. For plats, the City will have to start stamping and signing all plats (*i.e. master plats and preliminary plats*) with the same certificate that replats and final plats are currently being stamped with. The real effect of HB3167 is in the process in which the City currently approves site plans. The purpose of this law is to accelerate the approval process of site plans; however, for the City of Rockwall this removes much of the flexibility that staff uses to facilitate development request (*i.e. approving all site plans by conditional approval within 30-days and clearing up development issues on the back end*), and is more likely to make the process more difficult on applicants. This is tied to several aspects of the bill including:

(1) The rigid time period for acting on a site plan. Currently, applicants are able to submit site plans at their convenience and staff has not taken a rigid approach to application deadlines (*i.e. staff takes site plan applications before and after the submittal deadline*). Moving forward all site plans will have to be submitted on the deadline date with no early or late applications being accepted. This will be necessary to ensure that action is taken on all site plans within 30-days without exception.

(2) The Planning and Zoning Commission can only approve, approve with condition, or deny a site plan. This means that the Planning and Zoning Commission cannot table a case to request additional information. In circumstances where additional information (*e.g. Traffic Impact Analysis*) is required, the Planning and Zoning Commission will be required to deny the application, and the applicant will be required to resubmit the site plan at the next submittal date.

(3) Due to the laborious requirements associated with approving site plans with conditions under HB3167, staff will be required to deny any site plan that does not return comments on the date required to take the site plan forward. Currently, the City's approval process operates on a 30-day cycle, which makes it difficult for applicants to return all of staff's comments in time to make the Planning and Zoning Commission meeting date. Under the current process staff has been taking these site plans forward for conditional approval to help facilitate the applicant's request in a timely manner. Moving forward staff will be required to deny these requests for not meeting the requirements, and the applicant will be required to resubmit a new application at the next submittal deadline.

In addition, this bill will also require all site plans be stamped with a certificate and signed by the Planning and Zoning Commission chairman. Despite these requirements, staff will continue to look for ways to facilitate all requests in a timely manner; however, in certain cases applicants may be submitting and resubmitting a site plan request multiple times, which will extend the approval process beyond the desired 30-day period.

Strategies or Actions as a Result of HB3167

In order to bring the City's codes and applications into compliance with the requirements of HB3167, staff will need to make amendments to: [1] Chapter 38, *Subdivisions*, of the Municipal Code of Ordinances, [2] Article XI, *Zoning-Related Applications*, of the Unified Development Code (UDC), and [3] the Development Application. Beyond these amendments, there really are no strategies that staff can put forth to address the changes associated with HB3167 with the exception of changing the City's site plan process and discontinuing approving site plans conditionally. To make it easier on the Planning and Zoning Commissioners, staff intends on outlining what actions are required by the Planning and Zoning Commission on all future site plan memos. Staff will also include what options the Planning and Zoning Commission has with regard to each action (*i.e. approved, approve with condition or denial*).

Questions for the City Council

(1) Given the ambiguity associated with HB2439 and the possibility for legal challenge, is the City Council comfortable allowing staff to continue to enforce building material restrictions in the City's overlay districts? Planned Development Districts?

(2) Does the City Council want staff to explore amending the *Permissible Use Charts* in Article IV, *Permissible Uses*, of the Unified Development Code (UDC) to increase the use of Specific Use Permits (SUP's)? Require a SUP for residential accessory buildings?

(3) Does the City Council want staff to amend the City's general development standards for residential and/or non-residential development to be more restrictive (*e.g. increased anti-monotony, development standards similar to the overlay district standards applied citywide, increased landscaping requirements*)?

(4) Does the City Council want staff to create compensatory measures for variances and exceptions, and/or change the voting requirements for variances and exceptions?

AN ACT

relating to consent annexation requirements.

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

ARTICLE 1. REPEAL OF TIER SYSTEM

SECTION 1.01. The following provisions of Chapter 43, Local Government Code, are repealed:

(1) Sections 43.001(2), (3), (4), and (5);
(2) Section 43.011;
(3) Subchapter B;
(4) Section 43.0505(b);
(5) Section 43.052;
(6) Section 43.053;
(7) Section 43.056(q);
(8) Section 43.0561;
(9) Section 43.0562;
(10) Section 43.0563;
(11) Section 43.0564;
(12) Section 43.061(b);
(13) Section 43.066;
(14) Section 43.067;
(15) Section 43.068;
(16) Section 43.069;
(17) Section 43.0751(o);
(18) Section 43.0752;
(19) Section 43.103;
(20) Section 43.105; and
(21) Subchapter Y.

SECTION 1.02. The heading to Subchapter C-2, Chapter 43, Local Government Code, is amended to read as follows:

SUBCHAPTER C-2. GENERAL ANNEXATION AUTHORITY AND PROCEDURES REGARDING CONSENT ANNEXATIONS[~~: TIER 2 MUNICIPALITIES~~]

SECTION 1.03. The heading to Subchapter C-3, Chapter 43, Local Government Code, is amended to read as follows:

SUBCHAPTER C-3. ANNEXATION OF AREA ON REQUEST OF OWNERS[~~: TIER 2 MUNICIPALITIES~~]

SECTION 1.04. The heading to Subchapter C-4, Chapter 43, Local Government Code, is amended to read as follows:

SUBCHAPTER C-4. ANNEXATION OF AREAS WITH POPULATION OF LESS THAN 200 BY PETITION [~~: TIER 2 MUNICIPALITIES~~]

SECTION 1.05. The heading to Subchapter C-5, Chapter 43, Local Government Code, is amended to read as follows:

SUBCHAPTER C-5. ANNEXATION OF AREAS WITH POPULATION OF AT LEAST 200 BY ELECTION [~~: TIER 2 MUNICIPALITIES~~]

SECTION 1.06. Section 43.1025(c), Local Government Code, is amended to read as follows:

(c) The area described by Subsection (b) may be annexed under the requirements prescribed by Subchapter C-3, C-4, or C-5, as applicable [~~to a tier 2 municipality~~], but the annexation may not occur unless each municipality in whose extraterritorial jurisdiction the area may be located:

(1) consents to the annexation; and
(2) reduces its extraterritorial jurisdiction over the area as provided by Section 42.023.

SECTION 1.07. Section 43.1211, Local Government Code, is amended to read as follows:

Sec. 43.1211. USE OF CONSENT PROCEDURES [~~AUTHORITY OF CERTAIN TIER 2 MUNICIPALITIES~~] TO ANNEX FOR LIMITED PURPOSES. Except as provided by Section 43.0751, beginning December 1, 2017, a [~~tier 2~~] municipality described by Section 43.121(a) may annex an area for the limited purposes of applying its planning, zoning, health, and safety ordinances in the area using the procedures

under Subchapter C-3, C-4, or C-5, as applicable.

ARTICLE 2. CONFORMING CHANGES

SECTION 2.01. The following provisions of the Special District Local Laws Code are repealed:

(1) Section 8374.252(a);
(2) Section 8375.252(a);
(3) Section 8376.252(a);
(4) Section 8377.252(a);
(5) Section 8378.252(a);
(6) Section 8382.252(a);
(7) Section 8383.252(a);
(8) Section 8384.252(a);
(9) Section 8385.252(a); and
(10) Section 8477.302(a).

SECTION 2.02. Section 43.0116(a), Local Government Code, is amended to read as follows:

(a) Notwithstanding any other law and subject to Subsection (b), a municipality may annex all or part of the area located in an industrial district designated by the governing body of the municipality under Section 42.044 under the procedures prescribed by Subchapter C-1 [~~the requirements applicable to a tier 1 municipality~~].

SECTION 2.03. The heading to Subchapter C, Chapter 43, Local Government Code, is amended to read as follows:

SUBCHAPTER C. LIMITATIONS AND REQUIREMENTS REGARDING ANNEXATIONS EXEMPTED FROM CONSENT ANNEXATION PROCEDURES [~~PROCEDURE FOR AREAS ANNEXED UNDER MUNICIPAL ANNEXATION PLAN: TIER 1 MUNICIPALITIES~~]

SECTION 2.04. Section 43.0505(a), Local Government Code, is amended to read as follows:

(a) This [~~Except as provided by Subsection (b), this~~] subchapter applies only to an annexation under Subchapter C-1 [~~a tier 1 municipality~~].

SECTION 2.05. Sections 43.056(a), (b), (j), and (k), Local Government Code, are amended to read as follows:

(a) This section applies to a service plan under Section 43.065 [~~Before the first day of the 10th month after the month in which the inventory is prepared as provided by Section 43.053, the municipality proposing the annexation shall complete a service plan that provides for the extension of full municipal services to the area to be annexed. The municipality shall provide the services by any of the methods by which it extends the services to any other area of the municipality~~].

(b) The service plan, which must be completed [~~in the period provided by Subsection (a)~~] before the annexation, must include a program under which the municipality will provide full municipal services in the annexed area no later than 2-1/2 years after the effective date of the annexation, in accordance with Subsection (e), unless certain services cannot reasonably be provided within that period and the municipality proposes a schedule for providing those services, and must include a list of all services required by this section to be provided under the plan. If the municipality proposes a schedule to extend the period for providing certain services, the schedule must provide for the provision of full municipal services no later than 4-1/2 years after the effective date of the annexation. However, under the program if the municipality provides any of the following services within the corporate boundaries of the municipality before annexation, the municipality must provide those services in the area proposed for annexation on the effective date of the annexation of the area:

(1) police protection;
(2) fire protection;
(3) emergency medical services;
(4) solid waste collection, except as provided by Subsection (o);
(5) operation and maintenance of water and wastewater facilities in the annexed area that are not within the service area of another water or wastewater utility;

(6) operation and maintenance of roads and streets, including road and street lighting;

(7) operation and maintenance of parks, playgrounds, and swimming pools; and

(8) operation and maintenance of any other publicly owned facility, building, or service.

(j) The proposed service plan must be made available for public inspection and explained to the inhabitants of the area at the public hearings held under Section 43.063 [~~43.0561~~]. The plan may be amended through negotiation at the hearings, but the provision of any service may not be deleted. On completion of the public hearings, the service plan shall be attached to the ordinance annexing the area and approved as part of the ordinance.

(k) On approval by the governing body, the service plan is a contractual obligation that is not subject to amendment or repeal except that if the governing body determines at the public hearings required by this subsection that changed conditions or subsequent occurrences make the service plan unworkable or obsolete, the governing body may amend the service plan to conform to the changed conditions or subsequent occurrences. An amended service plan must provide for services that are comparable to or better than those established in the service plan before amendment. Before any amendment is adopted, the governing body must provide an opportunity for interested persons to be heard at public hearings called and held in the manner provided by Section 43.063 [~~43.0561~~].

SECTION 2.06. The heading to Subchapter C-1, Chapter 43, Local Government Code, is amended to read as follows:

SUBCHAPTER C-1. ANNEXATION PROCEDURE FOR AREAS EXEMPTED FROM CONSENT [~~MUNICIPAL~~] ANNEXATION PROCEDURES [~~PLAN: TIER 1 MUNICIPALITIES~~]

SECTION 2.07. Section 43.061(a), Local Government Code, is amended to read as follows:

(a) Unless otherwise specifically provided by this chapter or another law [~~Except as provided by Subsection (b)~~], this subchapter applies only to an annexation under:

(1) Section 43.0115 (Enclave);

(2) Section 43.0116 (Industrial District);

(3) Section 43.012 (Area Owned by Type-A Municipality);

(4) Section 43.013 (Navigable Stream);

(5) Section 43.0751(h) (Strategic Partnership);

(6) Section 43.101 (Municipally Owned Reservoir);

(7) Section 43.102 (Municipally Owned Airport); and

(8) Section 43.1055 (Road and Right-of-Way) [~~area that is proposed for annexation by a tier 1 municipality and that is not required to be included in a municipal annexation plan under Section 43.052(h)~~].

SECTION 2.08. Section 43.062(b), Local Government Code, is amended to read as follows:

(b) This subsection applies only to an area that contains fewer than 100 separate tracts of land on which one or more residential dwellings are located on each tract [~~described by Section 43.052(h)(1)~~]. Before the 30th day before the date of the first hearing required under Section 43.063, a municipality shall give written notice of its intent to annex the area to:

(1) each property owner in an area proposed for annexation, as indicated by the appraisal records furnished by the appraisal district for each county in which the area is located;

(2) each public entity[~~, as defined by Section 43.053,~~] or private entity that provides services in the area proposed for annexation, including each:

(A) municipality, county, fire protection service provider, including a volunteer fire department, and emergency medical services provider, including a volunteer emergency medical services provider; and

(B) municipal utility district, water control and improvement district, or other district created under Section

52, Article III, or Section 59, Article XVI, Texas Constitution; and

(3) each railroad company that serves the municipality and is on the municipality's tax roll if the company's right-of-way is in the area proposed for annexation.

SECTION 2.09. Section 43.0715(c), Local Government Code, is amended to read as follows:

(c) At the time notice of the municipality's intent to annex the land within the district is first given in accordance with Section [~~43.052,~~] 43.0683[~~,~~] or 43.0693, as applicable, the municipality shall proceed to initiate and complete a report for each developer conducted in accordance with the format approved by the Texas Commission on Environmental Quality for audits. In the event the municipality is unable to complete the report prior to the effective date of the annexation as a result of the developer's failure to provide information to the municipality which cannot be obtained from other sources, the municipality shall obtain from the district the estimated costs of each project previously undertaken by a developer which are eligible for reimbursement. The amount of such costs, as estimated by the district, shall be escrowed by the municipality for the benefit of the persons entitled to receive payment in an insured interest-bearing account with a financial institution authorized to do business in the state. To compensate the developer for the municipality's use of the infrastructure facilities pending the determination of the reimbursement amount, all interest accrued on the escrowed funds shall be paid to the developer whether or not the annexation is valid. Upon placement of the funds in the escrow account, the annexation may become effective. In the event a municipality timely escrows all estimated reimbursable amounts as required by this subsection and all such amounts, determined to be owed, including interest, are subsequently disbursed to the developer within five days of final determination in immediately available funds as required by this section, no penalties or interest shall accrue during the pendency of the escrow. Either the municipality or developer may, by written notice to the other party, require disputes regarding the amount owed under this section to be subject to nonbinding arbitration in accordance with the rules of the American Arbitration Association.

SECTION 2.10. Sections 43.0751(b) and (h), Local Government Code, are amended to read as follows:

(b) The governing bodies of a municipality and a district may negotiate and enter into a written strategic partnership agreement for the district by mutual consent. [~~The governing body of a municipality, on written request from a district included in the municipality's annexation plan under Section 43.052, shall negotiate and enter into a written strategic partnership agreement with the district. A district included in a municipality's annexation plan under Section 43.052:~~

[~~(1) - - may not submit its written request before the date of the second hearing required under Section 43.0561; and~~

[~~(2) - - must submit its written request before the 61st day after the date of the second hearing required under Section 43.0561.~~]

(h) On the full-purpose annexation conversion date set forth in the strategic partnership agreement pursuant to Subsection (f)(5), the land included within the boundaries of the district shall be deemed to be within the full-purpose boundary limits of the municipality without the need for further action by the governing body of the municipality. The full-purpose annexation conversion date established by a strategic partnership agreement may be altered only by mutual agreement of the district and the municipality. However, nothing herein shall prevent the municipality from terminating the agreement and instituting proceedings to annex the district, on request by the governing body of the district, on any date prior to the full-purpose annexation conversion date established by the strategic partnership agreement

under the procedures prescribed by Subchapter C-1 [~~applicable to a tier 1 municipality~~]. Land annexed for limited or full purposes under this section shall not be included in calculations prescribed by Section 43.055(a).

SECTION 2.11. Section 43.07515(a), Local Government Code, is amended to read as follows:

(a) A municipality may not regulate under Section 43.0751 [~~or 43.0752~~] the sale, use, storage, or transportation of fireworks outside of the municipality's boundaries.

SECTION 2.12. Section 43.101(c), Local Government Code, is amended to read as follows:

(c) A municipality may annex the [~~The~~] area described by this section [~~may be annexed~~] without the consent of any owners or residents of the area under the procedures prescribed by Subchapter C-1 [~~applicable to a tier 1 municipality by:~~

[~~(1) a tier 1 municipality; and~~

[~~(2)~~] if there are no owners other than the municipality or residents of the area[~~, a tier 2 municipality~~].

SECTION 2.13. Section 43.102(c), Local Government Code, is amended to read as follows:

(c) A municipality may annex the [~~The~~] area described by this section [~~may be annexed~~] without the consent of any owners or residents of the area under the procedures prescribed by Subchapter C-1 [~~applicable to a tier 1 municipality by:~~

[~~(1) a tier 1 municipality; and~~

[~~(2)~~] if there are no owners other than the municipality or residents of the area[~~, a tier 2 municipality~~].

SECTION 2.14. Section 43.1055, Local Government Code, is amended to read as follows:

Sec. 43.1055. ANNEXATION OF ROADS AND RIGHTS-OF-WAY [~~IN CERTAIN LARGE COUNTIES~~]. Notwithstanding any other law, a [~~tier 2~~] municipality may by ordinance annex a road or the right-of-way of a road on request of the owner of the road or right-of-way or the governing body of the political subdivision that maintains the road or right-of-way under the procedures prescribed by Subchapter C-1 [~~applicable to a tier 1 municipality~~].

SECTION 2.15. Section 43.141(a), Local Government Code, is amended to read as follows:

(a) A majority of the qualified voters of an annexed area may petition the governing body of the municipality to disannex the area if the municipality fails or refuses to provide services or to cause services to be provided to the area:

(1) if the area was annexed under Subchapter C-1 [~~municipality is a tier 1 municipality~~], within the period specified by Section 43.056 or by the service plan prepared for the area under that section; or

(2) if the area was annexed under Subchapter C-3, C-4, or C-5 [~~municipality is a tier 2 municipality~~], within the period specified by the written agreement under Section 43.0672 or the resolution under Section 43.0682 or 43.0692, as applicable.

SECTION 2.16. Section 43.203(b), Local Government Code, is amended to read as follows:

(b) On receipt of the district's petition, the governing body of the municipality shall enter into negotiations with the district for an agreement to alter the status of annexation that must:

(1) specify the period, which may not be less than 10 years beginning on January 1 of the year following the date of the agreement, in which limited-purpose annexation is in effect;

(2) provide that, at the expiration of the period, the district's annexation status will automatically revert to full-purpose annexation without following procedures provided by Section [~~Sections~~] 43.014 [~~and 43.052 through 43.055~~] or any [~~other~~] procedural requirement for annexation not in effect on January 1, 1995; and

(3) specify the financial obligations of the district during and after the period of limited-purpose annexation for:

(A) facilities constructed by the municipality that are in or that serve the district;

(B) debt incurred by the district for water and sewer infrastructure that will be assumed by the municipality at the end of the period of limited-purpose annexation; and

(C) use of the municipal sales taxes collected by the municipality for facilities or services in the district.

SECTION 2.17. Section 43.905(a), Local Government Code, is amended to read as follows:

(a) A municipality that proposes to annex an area shall provide written notice of the proposed annexation to each public school district located in the area proposed for annexation within the period prescribed for providing the notice of, as applicable:

(1) the hearing under Section 43.0673; or

(2) the first hearing under Section [~~43.0561,~~] 43.063, [~~43.0673,~~] 43.0683, or 43.0693[~~, as applicable~~].

SECTION 2.18. Sections 43.9051(a) and (b), Local Government Code, are amended to read as follows:

(a) In this section, "public entity" includes a county, fire protection service provider, including a volunteer fire department, emergency medical services provider, including a volunteer emergency medical services provider, or special district described[~~, as that term is defined~~] by Section 43.062(b)(2)(B) [~~43.052~~].

(b) A municipality that proposes to annex an area shall provide to each public entity that is located in or provides services to the area proposed for annexation written notice of the proposed annexation within the period prescribed for providing the notice of, as applicable:

(1) the hearing under Section 43.0673; or

(2) the first hearing under Section [~~43.0561,~~] 43.063, [~~43.0673,~~] 43.0683, or 43.0693[~~, as applicable, to each public entity that is located in or provides services to the area proposed for annexation~~].

ARTICLE 3. HEARING REQUIREMENTS FOR CERTAIN CONSENT ANNEXATIONS

SECTION 3.01. Section 43.0673, Local Government Code, is amended to read as follows:

Sec. 43.0673. PUBLIC HEARING [~~HEARINGS~~]. (a) Before a municipality may adopt an ordinance annexing an area under this subchapter [~~section~~], the governing body of the municipality must conduct one [~~at least two~~] public hearing [~~hearings~~].

[~~(b) The hearings must be conducted not less than 10 business days apart.~~]

(c) During the [~~first~~] public hearing, the governing body:

(1) must provide persons interested in the annexation the opportunity to be heard; and

(2) [~~. During the final public hearing, the governing body~~] may adopt an ordinance annexing the area.

(d) The municipality must post notice of the hearing [~~hearings~~] on the municipality's Internet website if the municipality has an Internet website and publish notice of the hearing [~~hearings~~] in a newspaper of general circulation in the municipality and in the area proposed for annexation. The notice for the [~~each~~] hearing must be:

(1) published at least once on or after the 20th day but before the 10th day before the date of the hearing; and

(2) [~~. The notice for each hearing must be~~] posted on the municipality's Internet website on or after the 20th day but before the 10th day before the date of the hearing and must remain posted until the date of the hearing.

ARTICLE 4. TRANSITION AND EFFECTIVE DATE

SECTION 4.01. (a) Except as provided by Subsections (b) and (c) of this section, the changes in law made by this Act apply only to an annexation of an area that is not final on the effective date of this Act. An annexation of an area that was final before the effective date of this Act is governed by those portions of Chapter 43, Local Government Code, that relate to post-annexation

procedures and requirements in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) The changes in law made by this Act do not apply to the annexation of an area for which the governing body of a municipality has adopted a resolution to direct the municipality's city manager to prepare a service plan for the area on or before the effective date of this Act. An annexation of an area for which the governing body adopted a resolution to direct the municipality's city manager to prepare a service plan for the area before the effective date of this Act is governed by Chapter 43, Local Government Code, as it existed on January 1, 2019.

(c) Until the fourth anniversary of the date that final judgment in an action described by this subsection is rendered, the changes in law made by this Act do not apply to an annexation of an area described by this subsection, and an annexation of an area described by this subsection is governed by Chapter 43, Local Government Code, as it existed on January 1, 2019. This subsection applies only to an area that is:

(1) wholly located in a county that:

(A) borders the Gulf of Mexico; and

(B) contains an international border; and

(2) proposed to be annexed by a municipality that is a named party in an action:

(A) involving issues of fact or law relating to the annexation; and

(B) commenced before January 1, 2019.

SECTION 4.02. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2019.

_____ _____

President of the Senate Speaker of the House

I certify that H.B. No. 347 was passed by the House on April 9, 2019, by the following vote: Yeas 133, Nays 14, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 347 on May 13, 2019, by the following vote: Yeas 131, Nays 9, 1 present, not voting.

_____

Chief Clerk of the House

I certify that H.B. No. 347 was passed by the Senate, with amendments, on May 8, 2019, by the following vote: Yeas 25, Nays 6.

_____

Secretary of the Senate

APPROVED: _____

Date

_____

Governor

By: Phelan, Rodriguez, Collier, Schaefer H.B. No. 2439

A BILL TO BE ENTITLED
AN ACT

relating to certain regulations adopted by governmental entities for the building products, materials, or methods used in the construction or renovation of residential or commercial buildings.

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

SECTION 1. Title 10, Government Code, is amended by adding Subtitle Z to read as follows:

SUBTITLE Z. MISCELLANEOUS PROVISIONS PROHIBITING CERTAIN GOVERNMENTAL ACTIONS

CHAPTER 3000. GOVERNMENTAL ACTION AFFECTING RESIDENTIAL AND COMMERCIAL CONSTRUCTION

Sec. 3000.001. DEFINITIONS. In this chapter:

(1) "National model code" has the meaning assigned by Section 214.217, Local Government Code.

(2) "Governmental entity" has the meaning assigned by Section 2007.002.

Sec. 3000.002. CERTAIN REGULATIONS REGARDING BUILDING PRODUCTS, MATERIALS, OR METHODS PROHIBITED. (a) Notwithstanding any other law and except as provided by Subsection (d), a governmental entity may not adopt or enforce a rule, charter provision, ordinance, order, building code, or other regulation that:

(1) prohibits or limits, directly or indirectly, the use or installation of a building product or material in the construction, renovation, maintenance, or other alteration of a residential or commercial building if the building product or material is approved for use by a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building; or

(2) establishes a standard for a building product, material, or aesthetic method in construction, renovation, maintenance, or other alteration of a residential or commercial building if the standard is more stringent than a standard for the product, material, or aesthetic method under a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building.

(b) A governmental entity that adopts a building code governing the construction, renovation, maintenance, or other alteration of a residential or commercial building may amend a provision of the building code to conform to local concerns if the amendment does not conflict with Subsection (a).

(c) This section does not apply to:

(1) a program established by a state agency that requires particular standards, incentives, or financing arrangements in order to comply with requirements of a state or federal funding source or housing program;

(2) a requirement for a building necessary to consider the building eligible for windstorm and hail insurance coverage under Chapter 2210, Insurance Code;

(3) an ordinance or other regulation that:

(A) regulates outdoor lighting for the purpose of reducing light pollution; and

(B) is adopted by a governmental entity that is certified as a Dark Sky Community by the International Dark-Sky Association as part of the International Dark Sky Places Program;

(4) an ordinance or order that:

(A) regulates outdoor lighting; and

(B) is adopted under Subchapter B, Chapter 229, Local Government Code, or Subchapter B, Chapter 240, Local Government Code;

(5) a building located in a place or area designated for its historical, cultural, or architectural importance and significance that a municipality may regulate under Section 211.003(b), Local Government Code, if the municipality:

(A) is a certified local government under the National Historic Preservation Act (54 U.S.C. Section 300101 et seq.); or

(B) has an applicable landmark ordinance that meets the requirements under the certified local government program as determined by the Texas Historical Commission;

(6) a building located in a place or area designated for its historical, cultural, or architectural importance and significance by a governmental entity, if designated before April 1, 2019;

(7) a building located in an area designated as a historic district on the National Register of Historic Places;

(8) a building designated as a Recorded Texas Historic Landmark;

(9) a building designated as a State Archeological Landmark or State Antiquities Landmark;

(10) a building listed on the National Register of Historic Places or designated as a landmark by a governmental entity;

(11) a building located in a World Heritage Buffer Zone; and

(12) a building located in an area designated for development, restoration, or preservation in a main street city under the main street program established under Section 442.014.

(d) A municipality that is not a municipality described by Subsection (c)(3)(A) or (B) may adopt or enforce a regulation described by Subsection (a) that applies to a building located in a place or area designated on or after April 1, 2019, by the municipality for its historical, cultural, or architectural importance and significance, if the municipality has the voluntary consent from the building owner.

(e) A rule, charter provision, ordinance, order, building code, or other regulation adopted by a governmental entity that conflicts with this section is void.

Sec. 3000.003. INJUNCTION. (a) The attorney general or an aggrieved party may file an action in district court to enjoin a violation or threatened violation of Section 3000.002.

(b) The court may grant appropriate relief.

(c) The attorney general may recover reasonable attorney's fees and costs incurred in bringing an action under this section.

(d) Sovereign and governmental immunity to suit is waived and abolished only to the extent necessary to enforce this chapter.

Sec. 3000.004. OTHER PROVISIONS NOT AFFECTED. This chapter does not affect provisions regarding the installation of a fire sprinkler protection system under Section 1301.551(i), Occupations Code, or Section 775.045(a)(1), Health and Safety Code.

Sec. 3000.005. SEVERABILITY. If any provision of a rule, charter provision, ordinance, order, building code, or other regulation described by Section 3000.002(a) is held invalid under this chapter, the invalidity does not affect other provisions or applications of the rule, charter provision, ordinance, order, building code, or other regulation that can be given effect without the invalid provision or application, and to this end the provisions of the rule, charter provision, ordinance, order, building code, or other regulation are severable.

SECTION 2. This Act takes effect September 1, 2019.

AN ACT

relating to county and municipal approval procedure for land development applications.

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

SECTION 1. Section 212.001, Local Government Code, is amended by amending Subdivision (2) and adding Subdivision (3) to read as follows:

(2) "Plan" means a subdivision development plan, including a subdivision plan, subdivision construction plan, site plan, land development application, and site development plan.

(3) "Plat" includes a preliminary plat, general plan, final plat, and replat.

SECTION 2. Subchapter A, Chapter 212, Local Government Code, is amended by adding Section 212.0085 to read as follows:

Sec. 212.0085. APPROVAL PROCEDURE: APPLICABILITY. The approval procedures under this subchapter apply to a municipality regardless of whether the municipality has entered into an interlocal agreement, including an interlocal agreement between a municipality and county under Section 242.001(d).

SECTION 3. The heading to Section 212.009, Local Government Code, is amended to read as follows:

Sec. 212.009. APPROVAL PROCEDURE: INITIAL APPROVAL.

SECTION 4. Section 212.009, Local Government Code, is amended by amending Subsections (a), (b), (c), and (d) and adding Subsections (b-1) and (b-2) to read as follows:

(a) The municipal authority responsible for approving plats shall approve, approve with conditions, or disapprove [~~act on~~] a plan or plat within 30 days after the date the plan or plat is filed. A plan or plat is [~~considered~~] approved by the municipal authority unless it is disapproved within that period and in accordance with Section 212.0091.

(b) If an ordinance requires that a plan or plat be approved by the governing body of the municipality in addition to the planning commission, the governing body shall approve, approve with conditions, or disapprove [~~act on~~] the plan or plat within 30 days after the date the plan or plat is approved by the planning commission or is [~~considered~~] approved by the inaction of the commission. A plan or plat is [~~considered~~] approved by the governing body unless it is disapproved within that period and in accordance with Section 212.0091.

(b-1) Notwithstanding Subsection (a) or (b), if a groundwater availability certification is required under Section 212.0101, the 30-day period described by those subsections begins on the date the applicant submits the groundwater availability certification to the municipal authority responsible for approving plats or the governing body of the municipality, as applicable.

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

(1) the applicant requests the extension in writing to the municipal authority responsible for approving plats or the governing body of the municipality, as applicable; and

(2) the municipal authority or governing body, as applicable, approves the extension request.

(c) If a plan or plat is approved, the municipal authority giving the approval shall endorse the plan or plat with a certificate indicating the approval. The certificate must be signed by:

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

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

(d) If the municipal authority responsible for approving plats fails to approve, approve with conditions, or disapprove [~~act on~~] a plan or plat within the prescribed period, the authority on the applicant's request shall issue a certificate stating the date the plan or plat was filed and that the authority failed to act on the plan or plat within the period. The certificate is effective in place of the endorsement required by Subsection (c).

SECTION 5. Subchapter A, Chapter 212, Local Government Code, is amended by adding Sections 212.0091, 212.0093, 212.0095, 212.0096, 212.0097, and 212.0099 to read as follows:

Sec. 212.0091. APPROVAL PROCEDURE: CONDITIONAL APPROVAL OR DISAPPROVAL REQUIREMENTS. (a) A municipal authority or governing body that conditionally approves or disapproves a plan or plat under this subchapter shall provide the applicant a written statement of the conditions for the conditional approval or reasons for disapproval that clearly articulates each specific condition for the conditional approval or reason for disapproval.

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

(1) must:

(A) be directly related to the requirements under this subchapter; and

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

(2) may not be arbitrary.

Sec. 212.0093. APPROVAL PROCEDURE: APPLICANT RESPONSE TO CONDITIONAL APPROVAL OR DISAPPROVAL. After the conditional approval or disapproval of a plan or plat under Section 212.0091, the applicant may submit to the municipal authority or governing body that conditionally approved or disapproved the plan or plat a written response that satisfies each condition for the conditional approval or remedies each reason for disapproval provided. The municipal authority or governing body may not establish a deadline for an applicant to submit the response.

Sec. 212.0095. APPROVAL PROCEDURE: APPROVAL OR DISAPPROVAL OF RESPONSE. (a) A municipal authority or governing body that receives a response under Section 212.0093 shall determine whether to approve or disapprove the applicant's previously conditionally approved or disapproved plan or plat not later than the 15th day after the date the response was submitted.

(b) A municipal authority or governing body that conditionally approves or disapproves a plan or plat following the submission of a response under Section 212.0093:

(1) must comply with Section 212.0091; and

(2) may disapprove the plan or plat only for a specific condition or reason provided to the applicant under Section 212.0091.

(c) A municipal authority or governing body that receives a response under Section 212.0093 shall approve a previously conditionally approved or disapproved plan or plat if the response adequately addresses each condition of the conditional approval or each reason for the disapproval.

(d) A previously conditionally approved or disapproved plan or plat is approved if:

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

(2) the municipal authority or governing body that received the response does not disapprove the plan or plat on or before the date required by Subsection (a) and in accordance with Section 212.0091.

Sec. 212.0096. APPROVAL PROCEDURE: ALTERNATIVE APPROVAL PROCESS. (a) Notwithstanding Sections 212.009, 212.0091, 212.0093, and 212.0095, an applicant may elect at any time to seek approval for a plan or plat under an alternative approval process adopted by a municipality if the process allows for a shorter approval period than the approval process described by Sections 212.009, 212.0091,

212.0093, and 212.0095.

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

(1) required to satisfy the requirements of Sections 212.009, 212.0091, 212.0093, and 212.0095 before bringing an action challenging a disapproval of a plan or plat under this subchapter; and

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

Sec. 212.0097. APPROVAL PROCEDURE: WAIVER PROHIBITED. A municipal authority responsible for approving plats or the governing body of a municipality may not request or require an applicant to waive a deadline or other approval procedure under this subchapter.

Sec. 212.0099. JUDICIAL REVIEW OF DISAPPROVAL. In a legal action challenging a disapproval of a plan or plat under this subchapter, the municipality has the burden of proving by clear and convincing evidence that the disapproval meets the requirements of this subchapter or any applicable case law. The court may not use a deferential standard.

SECTION 6. Section 212.014, Local Government Code, is amended to read as follows:

Sec. 212.014. REPLATTING WITHOUT VACATING PRECEDING PLAT. A replat of a subdivision or part of a subdivision may be recorded and is controlling over the preceding plat without vacation of that plat if the replat:

(1) is signed and acknowledged by only the owners of the property being replatted;

(2) is approved[~~, after a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard,~~] by the municipal authority responsible for approving plats; and

(3) does not attempt to amend or remove any covenants or restrictions.

SECTION 7. Section 212.015, Local Government Code, is amended by adding Subsections (a-1), (f), and (g) and amending Subsection (b) to read as follows:

(a-1) If a proposed replat described by Subsection (a) requires a variance or exception, a public hearing must be held by the municipal planning commission or the governing body of the municipality.

(b) Notice of the hearing required under Subsection (a-1) [~~Section 212.014~~] shall be given before the 15th day before the date of the hearing by:

(1) publication in an official newspaper or a newspaper of general circulation in the county in which the municipality is located; and

(2) by written notice, with a copy of Subsection (c) attached, forwarded by the municipal authority responsible for approving plats to the owners of lots that are in the original subdivision and that are within 200 feet of the lots to be replatted, as indicated on the most recently approved municipal tax roll or in the case of a subdivision within the extraterritorial jurisdiction, the most recently approved county tax roll of the property upon which the replat is requested. The written notice may be delivered by depositing the notice, properly addressed with postage prepaid, in a post office or postal depository within the boundaries of the municipality.

(f) If a proposed replat described by Subsection (a) does not require a variance or exception, the municipality shall, not later than the 15th day after the date the replat is approved, provide written notice by mail of the approval of the replat to each owner of a lot in the original subdivision that is within 200 feet of the lots to be replatted according to the most recent municipality or county tax roll. This subsection does not apply to a proposed replat if the municipal planning commission or the

governing body of the municipality holds a public hearing and gives notice of the hearing in the manner provided by Subsection (b).

(g) The notice of a replat approval required by Subsection (f) must include:

(1) the zoning designation of the property after the replat; and

(2) a telephone number and e-mail address an owner of a lot may use to contact the municipality about the replat.

SECTION 8. Subchapter A, Chapter 232, Local Government Code, is amended by adding Section 232.0023 to read as follows:

Sec. 232.0023. APPROVAL PROCEDURE: APPLICABILITY. The plat application approval procedures under this subchapter apply to a county regardless of whether the county has entered into an interlocal agreement, including an interlocal agreement between a municipality and county under Section 242.001(d).

SECTION 9. The heading to Section 232.0025, Local Government Code, is amended to read as follows:

Sec. 232.0025. APPROVAL PROCEDURE: TIMELY APPROVAL OF PLATS AND PLANS.

SECTION 10. Section 232.0025, Local Government Code, is amended by amending Subsections (d), (f), (g), (h), and (i), and adding Subsection (d-1) to read as follows:

(d) Except as provided by Subsection (f), the commissioners court or the court's designee shall approve, approve with conditions, or disapprove [~~take final action on~~] a plat application[~~, including the resolution of all appeals,~~] not later than the 30th [~~60th~~] day after the date the [~~a~~] completed [~~plat~~] application is received by the commissioners court or the court's designee. An application is approved by the commissioners court or the court's designee unless the application is disapproved within that period and in accordance with Section 232.0026.

(d-1) Notwithstanding Subsection (d), if a groundwater availability certification is required under Section 232.0032, the 30-day period described by that subsection begins on the date the applicant submits the groundwater availability certification to the commissioners court or the court's designee, as applicable.

(f) The 30-day [~~60-day~~] period under Subsection (d):

(1) may be extended for a [~~reasonable~~] period not to exceed 30 days, if:

(A) requested and agreed to in writing by the applicant and approved by the commissioners court or the court's designee; or

(B) [~~(2) may be extended 60 additional days if~~] Chapter 2007, Government Code, requires the county to perform a takings impact assessment in connection with the [~~a~~] plat application; and

(2) [~~(3)~~] applies only to a decision wholly within the control of the commissioners court or the court's designee.

(g) The commissioners court or the court's designee shall make the determination under Subsection (f)(1) [~~(f)(2)~~] of whether the 30-day [~~60-day~~] period will be extended not later than the 20th day after the date a completed plat application is received by the commissioners court or the court's designee.

(h) The commissioners court or the court's designee may not require [~~compel~~] an applicant to waive the time limits or approval procedure contained in this subchapter [~~section~~].

(i) If the commissioners court or the court's designee fails to approve, approve with conditions, or disapprove a plat application [~~take final action on the plat~~] as required by this subchapter [~~Subsection (d)~~]:

(1) the commissioners court shall refund the greater of the unexpended portion of any [~~plat~~] application fee or deposit or 50 percent of an [~~a plat~~] application fee or deposit that has been paid;

(2) the [~~plat~~] application is granted by operation of law; and

(3) the applicant may apply to a district court in the

county where the tract of land is located for a writ of mandamus to compel the commissioners court to issue documents recognizing the plat application's [~~plat's~~] approval.

SECTION 11. Subchapter A, Chapter 232, Local Government Code, is amended by adding Sections 232.0026, 232.0027, 232.0028, 232.00285, and 232.0029 to read as follows:

Sec. 232.0026. APPROVAL PROCEDURE: CONDITIONAL APPROVAL OR DISAPPROVAL REQUIREMENTS. (a) A commissioners court or designee that conditionally approves or disapproves of a plat application under this subchapter shall provide the applicant a written statement of the conditions for the conditional approval or the reasons for disapproval that clearly articulates each specific condition for the conditional approval or reason for disapproval.

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

(1) must:

(A) be directly related to the requirements of this subchapter; and

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

(2) may not be arbitrary.

Sec. 232.0027. APPROVAL PROCEDURE: APPLICANT RESPONSE TO CONDITIONAL APPROVAL OR DISAPPROVAL. After the conditional approval or disapproval of a plat application under Section 232.0026, the applicant may submit to the commissioners court or designee that conditionally approved or disapproved the application a written response that satisfies each condition for the conditional approval or remedies each reason for disapproval provided. The commissioners court or designee may not establish a deadline for an applicant to submit the response.

Sec. 232.0028. APPROVAL PROCEDURE: APPROVAL OR DISAPPROVAL OF RESPONSE. (a) A commissioners court or designee that receives a response under Section 232.0027 shall determine whether to approve or disapprove the applicant's previously conditionally approved or disapproved plat application not later than the 15th day after the date the response was submitted under Section 232.0027.

(b) A commissioners court or designee that conditionally approves or disapproves a plat application following the submission of a response under Section 232.0027:

(1) must comply with Section 232.0026; and

(2) may disapprove the application only for a specific condition or reason provided to the applicant for the original application under Section 232.0026.

(c) A commissioners court or designee that receives a response under Section 232.0027 shall approve a previously conditionally approved or disapproved plat application if the applicant's response adequately addresses each condition for the conditional approval or each reason for the disapproval.

(d) A previously conditionally approved or disapproved plat application is approved if:

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

(2) the commissioners court or designee that received the response does not disapprove the application on or before the date required by Subsection (a) and in accordance with Section 232.0026.

Sec. 232.00285. DEVELOPMENT PLAN REVIEW. (a) In this section, "development plan" includes a preliminary plat, preliminary subdivision plan, subdivision construction plan, site plan, general plan, land development application, or site development plan.

(b) Unless explicitly authorized by another law of this state, a county may not require a person to submit a development plan during the plat approval process required by this subchapter. If a county is authorized under another law of this state to require approval of a development plan, the county must comply with the

approval procedures under this subchapter during the approval process.

Sec. 232.0029. JUDICIAL REVIEW OF DISAPPROVAL. In a legal action challenging a disapproval of a plat application under this subchapter, the county has the burden of proving by clear and convincing evidence that the disapproval meets the requirements of this subchapter or any applicable case law. The court may not use a deferential standard.

SECTION 12. Section 232.0025(e), Local Government Code, is repealed.

SECTION 13. The change in law made by this Act applies only to a plat application filed on or after the effective date of this Act. A development or plan application filed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 14. This Act takes effect September 1, 2019.

_____ _____

President of the Senate Speaker of the House

I certify that H.B. No. 3167 was passed by the House on May 2, 2019, by the following vote: Yeas 119, Nays 18, 1 present, not voting.

_____

Chief Clerk of the House

I certify that H.B. No. 3167 was passed by the Senate on May 21, 2019, by the following vote: Yeas 27, Nays 3, 1 present, not voting
.

_____

Secretary of the Senate

APPROVED: _____

Date

_____

Governor

CITY OF ROCKWALL

CITY COUNCIL MEMORANDUM

PLANNING AND ZONING DEPARTMENT
385 S. GOLIAD STREET • ROCKWALL, TX 75087
PHONE: (972) 771-7745 • EMAIL: PLANNING@ROCKWALL.COM

TO:	Mayor and City Council
CC:	Rick Crowley, *City Manager* Mary Smith, *Assistant City Manager* Joey Boyd, *Assistant City Manager*
FROM:	Ryan Miller, *Director of Planning and Zoning*
DATE:	July 15, 2019
SUBJECT:	Amendment to Article IX, *Fences*, of Chapter 10, *Building and Building Regulations*, of the Municipal Code of Ordinances

The City's fence standards are located in Article IX, *Fences*, of Chapter 10, *Building and Building Regulations*, of the Municipal Code of Ordinances. Staff is requesting that the City Council consider moving this section to Article VIII, *Landscape Standards*, of the Unified Development Code (UDC) for the purpose of [*1*] bringing the fence standards under the zoning ordinance, [*2*] better distinguishing the standards between residential, commercial, and industrial fences, and [*3*] changing the process for residential front yard fences. By making the proposed changes all variances or exceptions to the fence standards would be able to be acted upon by the Planning and Zoning Commission with the City Council acting as an appeals board. This is similar to how the City currently handles variances and exceptions to the City's *General Residential, Commercial* and *Industrial Design Standards*. If the City Council chooses to direct staff to make the proposed changes, this amendment could be combined with the amendments necessary to address the changes resulting from the 86th Legislative Session. Staff has included a copy of the City's current fence requirements, and will be available at the work session on *July 15, 2019* to answer any questions.

ARTICLE XI, FENCES, CHAPTER 10, BUILDING AND BUILDING REGULATIONS, MUNICIPAL CODE OF ORDINANCES

DIVISION 1: GENERALLY

SECTION 10-402: DEFINITIONS

For the purposes of this article, the term "fence" means any wall or structure of any material, the purpose of which is to provide protection from intrusion, both physical and visual, to prevent escape, mark a boundary, enclose, screen, restrict access to, or decorate any lot, building or structure.

(Ord. No. 04-05, § 1(6-124), 1-20-2004)

SECTION 10-403: PERMIT REQUIRED; APPLICATIONS; FEES

No fence shall be constructed within the city without the owner or person in control of such premises, or his agent or contractor, having secured a permit therefor from the building official or his designee. A fence repair permit shall be required for the replacement of 25 linear feet or more of fencing and/or the replacement of five or more posts. When five or more posts are replaced, replacement posts must be metal posts. Applications shall be made and a permit issued on forms promulgated by the code official for such purpose. The fees for such permits shall be in amounts as established from time to time by resolution of the city council.

(Ord. No. 04-05, § 1(6-125), 1-20-2004)

SECTION 10-404: EXCEPTIONS

The following shall be exceptions to the terms of this article:

(1) Dikes and retaining walls for the purpose of diverting water and retaining soil shall not be considered fences within the terms of this article.
(2) Fences existing and in place at the time of the enactment of the ordinance from which this article is derived shall be excused from the permit provisions hereof. However, such fences shall be maintained to comply with the provisions hereof. Any such fence or any fence in an area annexed by the city after the effective date of the ordinance from which this article is derived shall be subject to the provisions of this article in the event of reconstruction, modification, enlargement, extension, alteration or any construction thereto other than normal maintenance thereof.

(Ord. No. 04-05, § 1(6-132), 1-20-2004)

SECTIONS 10-405—10-423: RESERVED

DIVISION 2: CONSTRUCTION STANDARDS

SECTION 10-424: SPECIAL PERMIT FOR REQUIRED FRONT YARD

(a) No fence shall be constructed in the required front yard of a residential property or of a tract or parcel of land adjacent to I-30 without first being granted a special permit by the city council. The city council may authorize the issuance of a special permit for the construction of a front yard fence subject to the provisions of this division. The city council, in considering and determining action on any request for a special permit, may require from the applicant plans, drawings, and other information concerning the proposed front yard fence. The city council may establish conditions of construction of any fence for which a special permit is authorized. However, no front yard fence proposed in a residential subdivision may be constructed without complying with any approved active deed restrictions for the subdivision.

(1) No fence shall be placed in the required front yard of a residential property in excess of 42 inches in height and constructed of wood or 48 inches in height and constructed of wrought iron, or in a non-residentially zoned area in excess of eight feet in height and shall be constructed of wrought iron. No opaque fences will be allowed in the required front yard.

(b) Exceptions.

(1) Model homes meeting the requirements as follows:

a. The maximum height of front yard fence is not to exceed 42 inches.
b. No opaque fences allowed in the front yard, fences must be 50 percent see-through.
c. The fence must be architecturally harmonious with the development and of split rail, picket, vinyl, or wrought iron.
d. These fences are only temporary and must be removed, or city council approval sought at such time permanent residency will be established.

(2) Single-Family—Estate (SF-E) meeting the requirements as follows:

a. No opaque fences allowed in the front yard, fences must be 50 percent see-through.
b. Front yard fences shall be no more than 48 inches in height.
c. Front yard fences shall be architecturally harmonious with the development, and of split rail, picket, vinyl, wrought iron or painted steel pipe.

(Ord. No. 04-05, § 1(6-126), 1-20-2004; Ord. No. 06-10, § 1(6-126), 3-20-2006; Ord. No. 11-23, § 1, 6-6-2011; Ord. No. 17-15, § 1, 3-20-2017)

SECTION 10-425: STANDARDS; SPECIFICATIONS; PROHIBITIONS

The following regulations shall apply to the construction of fences within the city, except for additional standards or requirements referenced in article V and article X of the Unified Development Code:

(1) No fence, guy wire, brace, light standard, sign, vee arm barbed wire base and arm, or any structure attached to a fence shall protrude over any property line.

(2) No chainlink fence shall be allowed within ten feet of the property lines unless completely screened from adjacent public areas and properties by either structure or solid landscape screening.

(3) Precast solid fencing shall require special approval by the planning and zoning commission.

(4) Fence height requirements. All fence heights shall be measured vertically from the inside natural or mean grade elevation of the yard.

a. No residential fence shall exceed eight feet in height.
b. No nonresidential fence shall exceed 12 feet in height.

(5) Fences may be placed in the required yards, as regulated in this article, and meeting the following conditions:

a. Corner lots in residentially zoned areas which have rear lot lines adjacent to alleys, or other rear lot lines. Fences may be constructed not to exceed eight feet in height along the side yard and rear yard lines as indicated on appendix B, attached to the ordinance from which this section is derived.
b. Corner lots in residentially zoned areas where the rear lot line is adjacent to a side lot line of an adjoining lot. Only fences not exceeding 42 inches in height and meeting the material requirements of a front yard fence in residentially zoned areas shall be constructed beyond the side building line

as indicated on appendix C, attached to the ordinance from which this section is derived. Fences constructed on or behind the building line shall not exceed eight feet in height.

c. Where an alley 15 feet or greater in width intervenes between the above-described lots, or a natural barrier of 15 feet or greater in width exists, such as creeks, railroads or easements where fences are prohibited, a fence not exceeding eight feet in height may be erected on the street side of the property line, indicated on appendix D, attached to the ordinance from which this section is derived.
d. Through lots in residentially zoned areas with street frontage on both the front and rear property line. Fences may be constructed not to exceed eight feet in height along the side yard and rear yard lines on through lots where all lots within the block have a rear yard along the same street frontage, as indicated on appendix E - Example 1, attached to the ordinance from which this section is derived.
e. When both front and rear yards are located along the same street frontage within a block, fences constructed within the designated rear yard shall not exceed 42 inches in height and shall meet the material requirements of a front yard fence in residentially zoned areas, as indicated on appendix E, Example 2, attached to the ordinance from which this section is derived, unless a variance to this request is granted by the zoning board of adjustment, as provided in section 10-447.

(6) Fences may be constructed of materials subject to the provisions of this article and the other codes and ordinances of the city.

a. Permitted materials are wood pickets, chain link, wrought iron, decorative metal (i.e. with the appearance of wrought iron but is made from powder-coated steel, aluminum or covered with a corrosion protection finish), brick, split face CMU blocks, stone, vinyl, fiberglass composite, painted steel pipe where allowed, barbed wire where allowed, concrete with stone face/form liner. Stucco is allowed on residential properties.
b. Any other materials that are not manufactured specifically as fencing materials are prohibited.

(7) Solid wood fencing exceeding 48 inches in height must be constructed using metal post set in concrete, or brick or stone columns.

(8) It shall be unlawful for any person to construct or maintain any electrical fence or electrical attachment of any type, dimension, or composition on any fence within the city. Barbed wire fences may be used without restrictions when in conjunction with agricultural related uses; provided, however, no barbed wire fence shall be located on any platted property that is zoned or used as a residential property. In areas where barbed wire fences are allowed, arms or base and arms with barbed wire not to exceed three strands will be permitted. Concertina/razor wire shall be prohibited. Such attachments will be considered part of the fence for the purposes of determining the maximum height of said fence.

(9) The code official may permit temporary fencing for the purpose of protection or securing of construction sites. The duration of use must be stated in the application for a permit. Barbed wire fences may be allowed for temporary use upon approval of the location, height, and construction by the building official.

(Ord. No. 04-05, § 1(6-127), 1-20-2004; Ord. No. 06-10, § 1(6-127), 3-20-2006; Ord. No. 11-23, § 1, 6-6-2011; Ord. No. 17-15, § 1, 3-20-2017)

SECTION 10-426: SWIMMING POOL, SPA AND HOT TUB/BARRIER REQUIREMENTS

(a) The top of the barrier shall be at least 48 inches (1,219 mm) above grade measured on the side of the barrier which faces away from the swimming pool. The maximum vertical clearance between grade and the bottom of the barrier shall be two inches (51 mm) measured on the side of the barrier which faces away from the swimming pool. Where the top of the pool structure is above grade, such as an aboveground pool, the barrier may be at ground level, such as the pool structure, or mounted on top of the pool structure. Where the barrier is mounted on top of the pool structure, the maximum vertical clearance between the top of the pool structure and the bottom of the barrier shall be four inches (102 mm).

(b) Openings in the barrier shall not allow passage of a four-inch-diameter (102 mm) sphere.

(c) Solid barriers which do not have openings, such as a masonry or stone wall, shall not contain indentations or protrusions except for normal construction tolerances and tooled masonry joints.

(d) Placement of members.

(1) Where the barrier is composed of horizontal and vertical members and the distance between the tops of the horizontal members is less than 45 inches (1,143 mm), the horizontal members shall be located on the swimming pool side of the fence. Spacing between vertical members shall not exceed 1.75 inches (44 mm) in width. Where there are decorative cutouts within vertical members, spacing within the cutouts shall not exceed 1.75 inches (44 mm) in width.
(2) Exception. Boards with a minimum 60-degree angle, cut and placed at the top of the horizontal fence members, may be used on existing fences that will become pool barriers. This exception does not apply to fences adjacent to public right-of-way.

(e) Where the barrier is composed of horizontal and vertical members and the distance between the tops of the horizontal members is 45 inches (1,143 mm) or more, spacing between vertical members shall not exceed four inches (102 mm). Where there are decorative cutouts within vertical members, spacing within the cutouts shall not exceed 1.75 inches (44 mm) in width.

(f) Maximum mesh size for chainlink fences shall be a 2.25-inch (57 mm) square unless the fence is provided with slats fastened at the top or the bottom, which reduce the openings to not more than 1.75 inches (44 mm).

(g) Where the barrier is composed of diagonal members, such as a lattice fence, the maximum opening formed by the diagonal members shall not be more than 1.75 inches (44 mm).

(h) Access gates shall comply with the requirements of subsections (a) through (g) of this section, and shall be equipped to accommodate a locking device. Pedestrian access gates shall open outward away from the pool and shall be self-closing and have a self-latching device. Gates other than pedestrian access gates shall have a self-latching device. Where the release mechanism of the self-latching device is located less than 54 inches (1,372 mm) from the bottom of the gate, the release mechanism and openings shall comply with the following:

(1) The release mechanism shall be located on the pool side of the gate at least three inches (76 mm) below the top of the gate; and
(2) The gate and barrier shall have no opening greater than 0.5 inch (12.7 mm) within 18 inches (457 mm) of the release mechanism.

(i) Where a wall of a dwelling serves as part of the barrier, one of the following conditions shall be met:

(1) The pool shall be equipped with a powered safety cover in compliance with ASTM F1346;
(2) All doors with direct access to the pool through that wall shall be equipped with an alarm which produces an audible warning when the door and/or its screen, if present, are opened. The alarm shall be listed in accordance with UL 2017. The audible alarm shall activate within seven seconds and sound continuously for a minimum of 30 seconds immediately after the door and/or its screen, if present are opened and be capable of being heard throughout the house during normal household activities. The alarm shall automatically reset under all conditions. The alarm shall be equipped with a manual means, such as touchpad or switch, to temporarily deactivate the alarm for a single opening. Deactivation shall last for not more than 15 seconds. The deactivation switch shall be located at least 54 inches (1,372 mm) above the threshold of the door; or
(3) Other means of protection, such as self-closing doors with self-latching devices, which are approved by the city council, shall be acceptable so long as the degree of protection afforded is not less than the protection afforded by subsection (i)(1) or (i)(2) of this section.

(j) Where an aboveground pool structure is used as a barrier or where the barrier is mounted on top of the pool structure and the means of access is a ladder or steps, then:

(1) The ladder or steps shall be capable of being secured, locked or removed to prevent access; or
(2) The ladder or steps shall be surrounded by a barrier which meets the requirements of subsections (a) through (i) of this section. When the ladder or steps are secured, locked or removed, any opening created shall not allow the passage of a four-inch-diameter (102 mm) sphere.

(k) Fence barrier exceptions for spas or hot tubs are as follows:

(1) Safety covers for spas and hot tubs must comply with ASTM F1346-91.
(2) There should be a means of fastening the safety cover to the hot tub or spa, such as key locks, combination locks, special tool, or similar devices.
(3) The safety cover should have a label that provides a warning and message regarding the risk of drowning.
(4) The cover should have been tested to demonstrate that it is capable of supporting the weight of one child (50 pounds) and one adult (225 pounds).
(5) There shall be no openings in the cover itself or at any point where the cover joins the surface of the hot tub or spa that would not allow a four-inch sphere to pass through.
(6) Safety covers are to be installed in accordance with the manufacture's instructions.

(Ord. No. 04-05, § 1(6-128), 1-20-2004; Ord. No. 06-10, § 1(6-128), 3-20-2006; Ord. No. 08-03, § 1(exh. A, art. IX(6-129)), 1-22-2008)

SECTIONS 10-427—10-445: RESERVED

DIVISION 3. - ADMINISTRATION

SECTION 10-446: INSPECTION UPON COMPLETION

Upon completion of a fence constructed under a permit issued by the building official, an inspection shall be made thereof by the building official or his designated representative. If the fence is constructed in accordance with the provisions of this article, the permit, and the application, the building official will issue written notice of acceptance to the permit holder. Any and all fences in the city shall hereafter be constructed under the provisions of this article and existing fences shall be maintained so as to comply with the requirements of this article at all times.

(Ord. No. 04-05, § 1(6-130), 1-20-2004)

SECTION 10-447: VARIANCES

The city council is hereby authorized, after public notice has been given and a public hearing has been held, to hear and decide on requests for variances as it feels will alleviate an unnecessary hardship on a property owner resulting from the literal enforcement of the requirements in this article.

(Ord. No. 17-15, § 1, 3-20-2017)

Editor's note— Ord. No. 17-15, § 1, adopted March 20, 2017, amended the Code by repealing former § 10-447 and adding a new § 10-447. Former § 10-447 pertained to appeals, and derived from Ord. No. 04-05, adopted January 20, 2004.

SECTION 10-448: MAINTENANCE

(a) No person owning, leasing, occupying, or having charge of any premises shall maintain or keep a fence in dilapidated condition that, although functional, creates an unsightly condition that substantially detracts from the appearance of the neighborhood.

(b) Each structural and decorative member of a fence shall be free of deterioration and be compatible in size, material, and appearance with the remainder of the fence. Fences shall not be externally braced in lieu of replacing or repairing posts, columns, or other structural members.

(c) The fence shall not be out of vertical alignment more than one (1) foot from the vertical measured at the top of the fence. Except, however, for fencing four (4) feet or less in height, the vertical alignment shall not be more than six (6) inches from the vertical measured at the top of the fence.

(d) Upon becoming aware of conditions set forth in subsections (a) through (c) of this section, the Neighborhood Improvement Services Representative shall make a determination as to whether the fence condition is a nuisance and should be abated. If so, the Neighborhood Improvement Services Representative shall give notice to such person having control of the premises to remedy such condition within ten days, unless good cause can be shown that additional time is needed to rectify the condition.

(Ord. No. 04-05, § 1(6-133), 1-20-2004; Ord. No. 17-15, § 1, 3-20-2017)

SECTIONS 10-449—10-465: RESERVED