

2019 Legislative Updates



86th Legislative Session

- Several laws have recently been adopted that significantly change and limit municipal regulation of development processes, land use, regulation of building standards and materials, building official decisions and appeals, local government meetings, and local government officials use of personal devices. Most of these laws become effective September 1, 2019; one became effective May 24, 2019 (annexation bill).
- Governor signed the bills June 14, 2019. Many of the bills require statutory notice and publication before P & Z Commissions and City Councils can address.
- Significant bills impactful to municipalities:
 - HB 2439 The Building Materials Bill
 - HB 3167 The Development Shot Clock Bill
 - HB 2497 The Board of Adjustment Bill
 - HB 347 The Annexation Bill
 - SB 1152 Elimination of Some Franchise Fees Bill
 - HB 2840 The Public Right To Speak At Meetings Bill
 - SB 944 The Personal Devices Bill

House Bill 2439: the Building Materials Bill

- Regulates building products, materials and methods: Cities cannot require specific materials in the construction, renovation, maintenance or alteration of a commercial or residential building if the product or material is an allowable use in the last three cycles of a national code [2012, 2015 and 2018 national codes (International Residential Code, International Building Code, etc.)] whether or not adopted by the city.
- Applies to most uses and structures: residential (including multi-family, accessory buildings) and commercial
- Applies to all stages: new construction and remodels
- Cities cannot have local amendments related to products, materials or aesthetic methods more stringent than national model codes [The House Research Organization bill analysis, 4/25/19, p. 5 states “the bill would allow builders to use any building material approved within the last three code cycles ... 2439 also could make it more difficult for local governments to preserve the aesthetic integrity of neighborhoods or commercial districts. Without locally specific restrictions on building materials, a property owner could build a house out of metal or cinder blocks, for example, which might not fit with the look of the rest of the neighborhood.”]

House Bill 2439: the Building Materials Bill

Exclusions: Bill does not apply to:

- (1) places or (2) areas designated for “historical, cultural or architectural importance and significance” before April 1, 2019:
 - Terms undefined by the Bill
 - Historical districts (whether designated by the state or nationally)
 - Most overlay zoning districts (including town center overlay districts)
 - Central business districts—review on a case-by-case basis
 - Planned development zoning—review on a case-by-case basis
 - Main Street exception—buildings located in main street areas if the city is a main street city
 - Cannot create new or expand existing historical, cultural or architectural zones without property owner consent
- Building eligible for windstorm or hail insurance coverage under Chapter 2210, Insurance Code
- Ordinances or regulations related to outdoor lighting for reducing light pollution

Enforcement: The Attorney General or an “aggrieved party” may seek injunctive relief and recover attorney’s fees

Effect: dilutes or negates local community standards. Bill 2439 removes City discretion to determine whether a specific material or product is appropriate for its community.

House Bill 2439: the Building Materials Bill

Allowable exterior wall covering – residential:

- Hardboard siding (panel and lap siding) [R703.5]
- Horizontal aluminum [R]
- Insulated vinyl siding [R]
- Particleboard panels [R]
- Polypropylene siding [R]
- Steel [R]
- Vinyl siding [R703.11]
- Wood siding (rustic, shiplap, bevel, butt tip) [R]
- Wood structural siding (panel and lap siding) [R703.5]
- Brick, concrete, masonry or stone [R703.8 and R703.12]
- Fiber cement siding (panel and lap siding) [R703.10.1 and R703.10.2]

Allowable exterior wall covering – nonresidential:

- Wood [BS1404.3]
- Masonry [BS1404.4]
- Metal [BS1404.5]
- Concrete [BS1404.6]
- Glass-unit masonry [BS1404.7]
- Plastics [BS1404.8]
- Vinyl siding [BS1404.9]
- Fiber-cement siding [BS1404.10]
- Exterior insulation and finish systems (EIFS) [BS1404.11]
- Polypropylene siding [BS1404.12]
- Foam plastic insulation [BS1404.13]

House Bill 2439: the Building Materials Bill

Allowable exterior roof covering – residential:

- Wood shingles [R905.7]
- Wood shakes [R905.8]
- Asphalt shingles [R905.2]
- Clay and concrete tile [R905.3]
- Metal roof shingles[R905.4]
- Mineral-surfaced roll roofing [R905.5]
- Slate and slate-type shingles [R905.6]
- Built-up roofs [R905.9]
- Metal panels [R905.10]

Allowable roof covering – nonresidential:

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- Wood shakes [BS1507.9]
- Asphalt shingles [BS1507.2]
- Clay and concrete tile [BS1507.3]
- Metal roof panels [BS1507.4]
- Metal roof shingles[BS1507.5]
- Mineral-surfaced roll roofing [BS1507.6]
- Slate shingles [BS1507.7]
- Built-up roofs [BS1507.10]
- Modified bitumen roofing [BS1507.11]
- Thermoset single-ply roofing [BS1507.12]
- Thermoplastic single-ply roofing [BS1507.13]
- Sprayed polyurethane foam roofing [BS1507.14]
- Liquid-applied roofing [BS1507.15]
- Photovoltaic shingles [BS1507.17]
- Vegetative roofs, roof gardens and landscaped roofs [BS1507.16]

EXAMPLES OF LEGISLATIVELY PERMITTED MATERIALS

Metal Siding/ Metal Roof

vs

Brick Exterior/ Shingle Roof



Metal Siding/ Metal Roof vs Brick Exterior/ Shingle Roof



Wood Siding/ Metal Roof vs Brick Exterior



Metal Multifamily Building



Metal Commercial Building



Maintenance Issues of Wood siding



Maintenance Issues of Vinyl siding



Legislatively allowable building materials: Wood Siding and Vegetative Roofing



HB 2439 Options

1. Increase architectural and setback standards to help ensure quality development (i.e., landscaping, buffer requirements, monotony rule, overhangs, trims, roof pitch)
2. Increase number of building materials required (i.e., require two types of building materials on each façade)
3. Incentivize HOA standards and deed restrictions (materials and architectural) through chapter 380 agreements
4. Utilize development agreements in the ETJ to include building material standards
5. Train city staff, city engineers, city planners, city managers, P & Z Commissions and City Council on 2439 standards

House Bill 3167: the Development “Shot Clock” Bill

- Land Development Applications – Plats and related plans (construction plans, engineering plans); does not include zoning plans (concept plans)
- Deadline: city must take action within 30 days or application is automatically approved (even without compliance with city standards)
- 3 potential decisions
 - Approve
 - Approve with conditions (by a written statement with conditions that “clearly articulates each specific condition for the conditional approval or each reason for disapproval.” Each condition or reason must be “directly related to the requirement under the subdivision rules and must include a citation to the statute or ordinance that is the basis for the conditional approval or denial”)
 - Deny (*see conditional approval written standard above*)
- Response by applicant
 - Written Response
 - No deadline to respond
 - Once received, city has 15 days to address on an agenda or it is automatically approved
- City cannot require applicant to sign a waiver of the HB 3167 deadlines
- Applicant can choose an alternative procedure if the process allows for a “shorter approval period”
- Standard of judicial review: city has the burden to prove by “clear and convincing evidence” (not preponderance of the evidence) that the disapproval meets the requirements of the law, and a “deferential standard” may not be applied by the courts.

HB 3167 Options

1. Under strict HB 3167 standard, go straight to P & Z and City Council for decisions likely with minimized comments/ likely increase P & Z meeting and City Council meetings/ items likely cannot be tabled to consider because of mandated stringent time standard
2. Alternatively, pre-application conferences for applications to assure completeness of the application/ plan
 - Applicant requests in writing at initial filing
 - Alternative timeline to allow for communication
3. Potentially delegate more decision approval authority to staff
4. P & Z Commission meets twice monthly; appoint alternate members to insure can meet quorum requirements
5. Only allow submittals once per week to help uniformity in processing
6. Address city staffing: potentially hire more city staff to be able to process applications on legislatively compressed approval deadlines
7. Increase development fees and engineering costs to address increased burden imposed on city staff
8. Train city staff repeatedly on the new timelines

Issues

- Does the applicant get more than one resubmittal (i.e., five resubmittals, etc.) to “respond” to a reply by the city disapproving the plat, thus extending perpetually the process? Or, does the applicant get one resubmittal before the city disapproves the plat, thus triggering the necessity for a new application?
- Can staff approval be an alternative approval?

House Bill 2497: Board of Adjustment Bill

- Ability to appeal to the ZBA has expanded. Any of the listed persons may appeal to the ZBA a decision made by an administrative official related to a specific application, address, or project:
 - Person who filed application;
 - Owner or representative of the subject property;
 - Property owner within 200 feet of the subject property; or
 - Any officer, department, board, or bureau of the municipality affected by the decision.
- Must file appeal not later than 20 days after the decision is made
- ZBA decision shall decide not later than 60 days after the date the appeal is filed
- Likely effect: increase litigation of ZBA decisions by surrounding property owners

House Bill 347: Annexation Bill

- Effective May 24, 2019 (not September 1, 2019)
- Ends most unilateral annexations by any type of municipality, including home-rule municipalities, regardless of population, location, or provision of water and/ or sewer to an area
- Most annexations made only on request of the owner of the land
- Likely effect: significantly curtail municipal growth

Senate Bill 1152: Elimination of some Franchise Fees

- Telecommunication providers utilize municipal rights of way to run lines for telephone, cable television and video. They pay fees for this use.
- The Bill amends sections 283.051 of the Local Government Code and 66.005 of the Utilities Code to reduce franchise fees paid by telecommunications' providers to pay the larger fee of multiple use fees per year.
- Certified telecommunications providers will file an annual written notification with each municipality it services of the fee it will pay

House Bill 2840: Public Right To Speak on Agenda Items Bill

- Amends the Texas Open Meetings Act to provide that “a governmental body shall allow each member of the public who desires to address the body regarding an item on an agenda for an open meeting of the body to address the body regarding the item at the meeting before or during the body’s consideration of the item.” [Appears to apply to all agenda items—consent, discussion only, action items, work sessions]
- Before the passage of the bill, the public had only the right to observe, rather than speak at, an open meeting of a governmental body. The public now has the right to speak on each item on the agenda at an open meeting of all governmental bodies, except for state agencies. Tex. Gov’t Code § 551.007(a).
- The governmental body must allow the public the right to speak on all items on the agenda either at the beginning of the meeting or during the meeting when the agenda item is being considered. *Id.* § 551.007(b). State agencies (including the Legislature) exempted.
- Likely effect: increase duration of City Council meetings and P & Z meetings
- A governmental body may adopt reasonable rules concerning the public’s right to speak at an open meeting, including how long the person can speak. *Id.* § 551.007(c).

SENATE BILL 944: The TOMA Personal Devices Bill

- Provides that a current or former officer or employee of a governmental body has no personal or property right to public information created or received while acting in an official capacity.
- **No 4th Amendment Constitutional right.** *Contra, see City of Ontario, Cal. v. Quon*, 560 U.S. 746 (2010)(“individuals do not lose their Fourth Amendment rights merely because they work for the government instead of a private employer”); *U.S. v. Warshak*, 631 F.3d 266, 288 (6th Cir. 2014)(an individual holds a reasonable expectation of privacy in the content of emails that are stored or sent and received through a third party internet service provider); *State v. Bone*, 107 So.3d 49, 66 (La. 2013)(exclusive user of a cell phone has a reasonable expectation of privacy in text messages, and to review constitutes a search requiring probable cause)
- Requires all current and former officers and employees of a governmental body who maintain public information on a privately owned device to either: (1) forward or transfer the public information to the governmental body or the body’s server to be preserved for the legally requisite retention periods; or (2) preserve the information in its original form in a backup or archive on the privately owned device for the legally requisite retention periods. Consequences include civil injunctive relief and potential criminal charges. |