

**Building Materials**

**Planner: Nathan Warren**

**Request:**

Consideration of amending Chapters 51 and 51A of the Dallas Development Code by deleting certain prohibitions, limitations, or requirements of building materials in accordance with state law.

**Background:**

- On June 14, 2019, House Bill No. 2439 (“HB 2439”) was signed into Texas law by Governor Abbott. (see appendix)
- HB 2439 became effective on September 1, 2019.

**Intent:**

The proposed amendments to the Dallas Development Code intend to bring Chapters 51 and 51A of the Dallas Development Code into compliance with the newly effective state law.

**General Information/Staff Analysis:**

HB 2439 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 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.

This bill prohibits local governments from regulating building materials with the following exceptions:

- 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
- a requirement for a building necessary to consider the building eligible for windstorm and hail insurance coverage under Chapter 2210, Insurance Code
- an ordinance or other regulation that regulates outdoor lighting that is adopted for the purpose of reducing light pollution and that 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; or applies to outdoor lighting within five miles of the boundary of a military base in which an active training program is conducted

- an ordinance or order that regulates outdoor lighting and is adopted under Subchapter B, Chapter 229, Local Government Code, or Subchapter B, Chapter 240, Local Government Code
- 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 is a certified local government under the National Historic Preservation Act (54 U.S.C. Section 300101 et seq.); or has an applicable landmark ordinance that meets the requirements under the certified local government program as determined by the Texas Historical Commission
- 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
- a building located in an area designated as a historic district on the National Register of Historic Places
- a building designated as a Recorded Texas Historic Landmark
- a building designated as a State Archeological Landmark or State Antiquities Landmark
- a building listed on the National Register of Historic Places or designated as a landmark by a governmental entity
- a building located in a World Heritage Buffer Zone
- 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

The following sections are effected:

Section 51-4.201(b), Specific Residential Uses, in Chapter 51 requires industrial housing for single family and duplex development to have exterior siding compatible with the single family dwellings located within 500 feet of the lot on which the industrialized housing is proposed to be located. Chapter 51 also requires accessory structures to have exterior siding compatible with the main building. These regulations are prohibited by HB 2439.

Section 51A-4.127(c)(F)(i) requires parking decks and garage facades visible at ground level from any street or alley to have the appearance of a multiple-story building, and be of similar material finish as the building on the site for which the parking is being provided.

Section 51A-4.209(b), Residential Uses, in Chapter 51A requires industrial housing for single family and duplex development to have exterior siding compatible with the single family dwellings located within 500 feet of the lot on which the industrialized housing is proposed to be located. Chapter 51A also requires accessory structures to have exterior siding compatible with the main building.

Section 51A-4.217(12)(F)(xii) requires at least 70 percent of the side walls of pedestrian skybridges must be open, or glass or transparent material with a light transmission of not less than 36 percent and a luminous reflectance of not more than six percent.

Section 51A-4.345(k)(2) requires an aboveground mechanized parking facility must be concealed by a facade that is compatible in appearance with the facade of the main building it serves, or compatible in appearance with other buildings within a one block radius.

Section 51A-4.605(a)(6) requires no more than 75 percent of the area of a facade wall, exclusive of fenestration, may have a single material or color; and rear façade walls may only be smooth-faced concrete block that is non-tinted or non-burnished, tilt-up concrete panels that are unadorned or untextured, or prefabricated steel panels.

Section 51A-4.906(b)(3) requires the design and materials of SAH units must be equivalent to the design and materials of other units located on the same lot.

Section 51A-4.1107(b)(4)(D) requires that portion of the ground-level floor facing the street of any multi-floor parking facility must have an active use other than parking, with a minimum depth of 25 feet, or must have an exterior facade that is similar in materials, architecture, and appearance to the facade of the main structure.

Section 51A-4.1107(d)(1) requires a transparent surface is required for every 25 linear feet of continuous street-fronting and open-space-fronting facade.

Section 51A-13.501(f)(4)(E) requires at least 85 percent of the exterior finish of all buildings (not including windows and doors) must be masonry; and the use of no more than 15 percent of the following materials may be used on the exterior finish of a building:

- Pre-cast masonry (for trim and cornice elements only).
- Glass fiber reinforced fiber concrete and fiberglass reinforced plastic (for trim elements only).
- Metal (for beam lintels, trim elements, and ornamentation only).
- Split-faced concrete masonry unit (only for piers and foundation walls).
- Glass block (no closer than 30 inches to building corners).
- Fabric for awnings.

### **Proposal**

Staff recommends approval of the proposed amendments to Chapters 51 and 51A of the Dallas Development Code because the amendments will bring this section into compliance with current state law.

**Appendix:**

H.B. No. 2439

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 regulates outdoor lighting that is adopted for the purpose of reducing light pollution and that:

(A) 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;  
or

(B) applies to outdoor lighting within five miles of the boundary of a military base in which an active training program is conducted;

(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)(5)(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.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 2439 was passed by the House on April 30, 2019, by the following vote: Yeas 124, Nays 21, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2439 on May 23, 2019, by the following vote: Yeas 133, Nays 9, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 2439 was passed by the Senate, with amendments, on May 19, 2019, by the following vote: Yeas 26, Nays 5.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor