

Exhibit E-House Bill 2439, House Bill 3167

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

1 construction, renovation, maintenance, or other alteration of a
2 residential or commercial building if the building product or
3 material is approved for use by a national model code published
4 within the last three code cycles that applies to the construction,
5 renovation, maintenance, or other alteration of the building; or

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

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

19 (c) This section does not apply to:

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

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

27 (3) an ordinance or other regulation that regulates

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

3 (A) is adopted by a governmental entity that is
4 certified as a Dark Sky Community by the International Dark-Sky
5 Association as part of the International Dark Sky Places Program;
6 or

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

10 (4) an ordinance or order that:

11 (A) regulates outdoor lighting; and

12 (B) is adopted under Subchapter B, Chapter [229](#),
13 Local Government Code, or Subchapter B, Chapter [240](#), Local
14 Government Code;

15 (5) a building located in a place or area designated
16 for its historical, cultural, or architectural importance and
17 significance that a municipality may regulate under Section
18 [211.003](#)(b), Local Government Code, if the municipality:

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

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

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

1 1, 2019;

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

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

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

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

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

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

16 (d) A municipality that is not a municipality described by
17 Subsection (c)(5)(A) or (B) may adopt or enforce a regulation
18 described by Subsection (a) that applies to a building located in a
19 place or area designated on or after April 1, 2019, by the
20 municipality for its historical, cultural, or architectural
21 importance and significance, if the municipality has the voluntary
22 consent from the building owner.

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

26 Sec. 3000.003. INJUNCTION. (a) The attorney general or an
27 aggrieved party may file an action in district court to enjoin a

1 violation or threatened violation of Section 3000.002.

2 (b) The court may grant appropriate relief.

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

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

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

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

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

H.B. No. 2439

President of the Senate

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.

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.

Secretary of the Senate

APPROVED: _____

Date

Governor

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

1 Subsections (b-1) and (b-2) to read as follows:

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

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

17 (b-1) Notwithstanding Subsection (a) or (b), if a
18 groundwater availability certification is required under Section
19 212.0101, the 30-day period described by those subsections begins
20 on the date the applicant submits the groundwater availability
21 certification to the municipal authority responsible for approving
22 plats or the governing body of the municipality, as applicable.

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

26 (1) the applicant requests the extension in writing to
27 the municipal authority responsible for approving plats or the

1 governing body of the municipality, as applicable; and

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

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

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

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

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

18 SECTION 5. Subchapter A, Chapter 212, Local Government
19 Code, is amended by adding Sections 212.0091, 212.0093, 212.0095,
20 212.0096, 212.0097, and 212.0099 to read as follows:

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

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

3 (1) must:

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

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

9 (2) may not be arbitrary.

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

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

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

1 (1) must comply with Section 212.0091; and

2 (2) may disapprove the plan or plat only for a specific
3 condition or reason provided to the applicant under Section
4 212.0091.

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

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

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

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

18 Sec. 212.0096. APPROVAL PROCEDURE: ALTERNATIVE APPROVAL
19 PROCESS. (a) Notwithstanding Sections [212.009](#), 212.0091, 212.0093,
20 and 212.0095, an applicant may elect at any time to seek approval
21 for a plan or plat under an alternative approval process adopted by
22 a municipality if the process allows for a shorter approval period
23 than the approval process described by Sections [212.009](#), 212.0091,
24 212.0093, and 212.0095.

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

27 (1) required to satisfy the requirements of Sections

1 212.009, 212.0091, 212.0093, and 212.0095 before bringing an action
2 challenging a disapproval of a plan or plat under this subchapter;
3 and

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

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

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

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

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

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

26 (2) is approved~~[, after a public hearing on the matter~~
27 ~~at which parties in interest and citizens have an opportunity to be~~

1 ~~heard,~~] by the municipal authority responsible for approving plats;
2 and

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

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

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

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

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

18 (2) by written notice, with a copy of Subsection (c)
19 attached, forwarded by the municipal authority responsible for
20 approving plats to the owners of lots that are in the original
21 subdivision and that are within 200 feet of the lots to be
22 replatted, as indicated on the most recently approved municipal tax
23 roll or in the case of a subdivision within the extraterritorial
24 jurisdiction, the most recently approved county tax roll of the
25 property upon which the replat is requested. The written notice may
26 be delivered by depositing the notice, properly addressed with
27 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

1 AND PLANS.

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

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

14 (d-1) Notwithstanding Subsection (d), if a groundwater
15 availability certification is required under Section [232.0032](#), the
16 30-day period described by that subsection begins on the date the
17 applicant submits the groundwater availability certification to
18 the commissioners court or the court's designee, as applicable.

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

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

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

25 (B) ~~[(2) may be extended 60 additional days if]~~

26 Chapter [2007](#), Government Code, requires the county to perform a
27 takings impact assessment in connection with the ~~[a]~~ plat

1 application; and

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

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

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

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

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

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

22 (3) the applicant may apply to a district court in the
23 county where the tract of land is located for a writ of mandamus to
24 compel the commissioners court to issue documents recognizing the
25 plat application's [~~plat's~~] approval.

26 SECTION 11. Subchapter A, Chapter [232](#), Local Government
27 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

1 OF RESPONSE. (a) A commissioners court or designee that receives a
2 response under Section 232.0027 shall determine whether to approve
3 or disapprove the applicant's previously conditionally approved or
4 disapproved plat application not later than the 15th day after the
5 date the response was submitted under Section 232.0027.

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

9 (1) must comply with Section 232.0026; and

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

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

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

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

22 (2) the commissioners court or designee that received
23 the response does not disapprove the application on or before the
24 date required by Subsection (a) and in accordance with Section
25 232.0026.

26 Sec. 232.00285. DEVELOPMENT PLAN REVIEW. (a) In this
27 section, "development plan" includes a preliminary plat,

1 preliminary subdivision plan, subdivision construction plan, site
2 plan, general plan, land development application, or site
3 development plan.

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

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

17 SECTION 12. Section [232.0025\(e\)](#), Local Government Code, is
18 repealed.

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

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

H.B. No. 3167

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