



**DATE:** August 8, 2023  
**TO:** Honorable Mayor & City Council  
**FROM:** Planning & Zoning Commission   
**VIA:** Eric Hill, AICP, Assistant Director of Planning acting as Secretary of the Planning & Zoning Commission  
Christina D. Day, AICP, Director of Planning   
**SUBJECT:** Results of Planning & Zoning Commission Meeting of August 7, 2023

**AGENDA ITEM NO. 5A - ZONING CASE 2023-012**  
**PETITIONER: CITY OF PLANO**

Request to amend various sections of the Zoning Ordinance pertaining to recent state legislative actions and to ensure compliance with state law. Project #ZC2023-012.

**APPROVED:** 8-0

Speaker Card(s) Received	Support: <u>0</u>	Oppose: <u>0</u>	Neutral: <u>0</u>
Petition Signatures Received:	Support: <u>0</u>	Oppose: <u>0</u>	Neutral: <u>0</u>
Other Responses:	Support: <u>0</u>	Oppose: <u>0</u>	Neutral: <u>0</u>

**RESULTS:**

- 1) The Commission called an additional Public Hearing to consider further Zoning Ordinance amendments including amendments related to SB 929 (#CPH2023-009), and
- 2) The Commission recommends approval of Zoning Ordinance amendments as follows (additions are indicated in underlined text; deletions are indicated in ~~strikethrough~~ text).

**Amend Subsection 4.300.1 of Section 4.300 (Planning & Zoning Commission Public Hearing) of Article 4 (Amendments), such portions of section to read as follows:**

**4.300 Planning & Zoning Commission Public Hearing**

- .1 Upon receipt of a complete written petition for zoning or for a change or an amendment to an existing provision of this Zoning Ordinance, the Planning Department staff will set a date for a public hearing before the Planning & Zoning Commission, consistent with applicable notice requirements. ~~In no case shall the public hearing be held within 36 days after the date of filing the written petition.~~

...

.5 The Planning & Zoning Commission must provide written notice of each public hearing regarding any proposed adoption of or change to a zoning regulation or boundary under which a current conforming use of a property is a nonconforming use if the regulation or boundary is adopted or changed. The notice must:

- a. Be mailed by United States mail to each owner of real or business personal property where the proposed nonconforming use is located as indicated by the most recently approved municipal tax roll and each occupant of the property not later than the 10th day before the hearing date;
- b. Contain the time and place of the hearing; and
- c. Include the following text in bold 14-point type or larger:

“THE CITY OF PLANO IS HOLDING A HEARING THAT WILL DETERMINE WHETHER YOU MAY LOSE THE RIGHT TO CONTINUE USING YOUR PROPERTY FOR ITS CURRENT USE, PLEASE READ THIS NOTICE CAREFULLY.”

.6 ~~5~~ Properties located within 500 feet of a proposed change in a zoning classification, which do not receive a notice as required by Sec. 4.300.4, a written courtesy notice will be sent to each owner of real property, as indicated by the most recently approved municipal tax roll, before the 20th day before the hearing. A courtesy notice shall also be sent to properties located within 500 feet of the property on which the change is proposed, which do not receive a notice as required by Sec. 4.300.4 where located in territory annexed to the municipality and not included on the most recently approved municipal tax roll. The courtesy notice may be served by its deposit in the municipality, properly addressed with postage paid, in the United States mail.

.7 ~~6~~ The Planning & Zoning Commission shall hold a public hearing on any petition for any amendment or change prior to making its recommendation and report to the City Council. The Planning & Zoning Commission may establish such regulations and restrictions regarding the presentation of a zoning case at the public hearing as they may deem necessary.

**Amend Article 7 (Nonconformities), such portions of article to read as follows:**

...

### **7.200 Continuance**

~~Any A person using a property in a manner considered to be a nonconforming use of land or structures as a result of the adoption of or change to a zoning regulation or boundary may be continued (for indefinite periods of time) to use the property in the same manner unless required by the city to stop subject to such regulations as the Board of Adjustment may require for immediate preservation of the adjoining property prior to the ultimate removal of the nonconforming use of the property.~~

### **7.300 Change of Use**

The ~~Building Official~~ Director of Planning may grant a change of occupancy from one nonconforming use to another, providing the use is within the same, or higher or more restricted classification as the original nonconforming use. In the event a nonconforming use of a building may be changed to another nonconforming use of more restricted classification, it shall not later be changed to a less restrictive classification of use and the prior less restrictive classification shall be considered to have been abandoned.

...

Amend a portion of Subsection 10.900.3 (Area, Yard, and Bulk Requirements) of Section 10.900 (CB-1, Central Business-1 District) of Article 10 (Nonresidential Districts), such portion of subsection to read as follows:

Description	Residential Requirement	Nonresidential Requirement
Minimum Open Space	<del>See Sec. 10.900.5A.viii</del> <u>100</u> square feet per unit	None

Amend Part A (Miscellaneous) of Subsection 10.900.5 (Special District Requirements) of Section 10.900 (CB-1, Central Business-1 District) of Article 10 (Nonresidential Districts), such portions of part to read as follows:

**A. Miscellaneous**

...

~~viii.~~ Minimum usable open space must be calculated as follows:

~~a.~~ Standard Option: 200 square feet per unit

~~b.~~ Incentive Option: If utilizing the standards in Article 23, the minimum usable open space may be reduced to 100 square feet per unit.

~~viii~~ ~~ix.~~ Sites for fire stations, police stations, schools, water towers, and reservoirs shall be provided at such time, if ever, as such sites are determined to be necessary.

Amend Subsection 10.1100.1 (Purpose) of Section 10.1100 (RC, Regional Commercial District) of Article 10 (Nonresidential Districts), such subsection to read in its entirety as follows:

**.1 Purpose**

The RC district is ~~a~~ ~~an architectural and~~ cultural district intended for use in conjunction with an RE district in high visibility locations which are of regional cultural ~~and architectural~~ importance to the community due to its significance for generating economic investment. It provides for retail and service uses at appropriate nodes within the corridor of specified tollways and expressways serving Plano and surrounding communities, in addition to office and limited manufacturing uses. The district's standards are designed to ensure compatibility between various uses within a corridor and surrounding residential neighborhoods.

Amend Subsection 10.1200.1 (Purpose) of Section 10.1200 (RE, Regional Employment District) of Article 10 (Nonresidential Districts), such subsection to read in its entirety as follows:

**.1 Purpose**

The RE district is ~~a~~ ~~an architectural and~~ cultural district intended to provide for office and limited manufacturing uses in high visibility locations which are of regional cultural ~~and architectural~~ importance to the community due to its significance for generating economic investment that are consistent with the regional status of certain tollways and expressways serving Plano and surrounding communities. Some retail uses are also appropriate when developed in conjunction with the primary uses. The district's standards are designed to ensure compatibility between the various uses within a corridor and surrounding residential neighborhoods.

**Amend Subsection 12.100.5 of Section 12.100 (Purpose) of Article 12 (Planned Development Districts), such subsection to read in its entirety as follows:**

- .5 To protect and enhance the aesthetic and visual quality of development by creating architectural and cultural districts intended to provide for unique locations which are of architectural and cultural importance to the community.

**Amend Part A of Subsection 17.100.1 (Landscaping along Street Rights-of-Way) of Section 17.100 (Nonresidential Landscaping Requirements) of Article 17 (Landscaping and Tree Preservation), such portions of part to read as follows:**

- A. A landscape edge must be provided adjacent to all streets, as follows:
  - ~~i. Standard Option: The landscape edge must be a minimum width of 20 feet, exclusive of rights-of-way. Within the landscape edge, 6 caliper inches of shade trees or 12 caliper inches of ornamental trees must be planted per 500 square feet of landscape edge with a minimum tree size of 2-inch caliper. The number of required trees must be calculated solely on the area of the required landscape edge. See Figure 17-1.~~
  - ii. ~~Incentive Option: If utilizing the standards in Article 23, the~~ The landscape edge may be reduced to must be a minimum width of 10 feet, exclusive of street rights-of-way. Within the landscape edge, 3 caliper inches of shade trees or 6 caliper inches of ornamental trees must be planted per 500 square feet of landscape edge with a minimum tree size of 2-inch caliper. The number of required trees must be calculated solely on the area of the required landscape edge. See Figure 17-1.

...

**Amend Part B of Subsection 17.100.3 (Landscaping for Corner Lots) of Section 17.100 (Nonresidential Landscaping Requirements) of Article 17 (Landscaping and Tree Preservation), such part to read in its entirety as follows:**

- B. ~~For corner lots, a landscape edge must be provided adjacent to all streets as follows:~~
  - ~~i. Standard Option: A minimum 20-foot wide landscape edge must be located along all street right-of-way lines beginning at the corner and extending 175 feet or to the closest driveway. Beyond this point, the landscape edge may be gradually reduced (over a distance of 25 feet) to 10 feet in width.~~
  - ii. ~~Incentive Option: If utilizing the standards in Article 23, the landscape edge may be reduced to a minimum 15-foot wide landscape edge~~ must be located along all street right-of-way lines beginning at the corner and extending 175 feet or to the closest driveway. Beyond this point, the landscape edge may be gradually reduced (over a distance of 25 feet) to 10 feet in width. Figure 17-3.

**Delete Subsection 17.100.6 (Landscaping along Internal Property Lines) of Section 17.100 (Nonresidential Landscaping Requirements) of Article 17 (Landscaping and Tree Preservation), such subsection to be deleted as follows:**

- ~~.6 **Landscaping along Internal Property Lines**  
A landscape edge must be provided adjacent to all internal property lines which are not adjacent to a right-of-way or street easement as follows:~~

~~A. Standard Option: A minimum 10-foot landscape edge must be provided. Within the landscape edge, 6-caliper inches of ornamental trees must be planted per 500 square feet of landscape edge with a minimum tree size of 2-inch caliper. The number of required trees must be calculated solely on the area of the required landscape edge.~~

~~B. Incentive Option: If utilizing the standards in Article 23, a landscape edge along internal property lines is not required.~~

**Amend Part A of Subsection 17.200.1 (Multifamily, Retirement, and Supportive Housing Landscaping Requirements) of Section 17.200 (Residential Landscaping Requirements) of Article 17 (Landscaping and Tree Preservation), such part to read in its entirety as follows:**

A. A landscape edge must be provided adjacent to all streets, as follows:

~~i. Standard Option: The landscape edge shall be a minimum width of 20 feet, exclusive of rights-of-way. Within the landscape edge, two shade trees (3-inch caliper minimum) or an approved ornamental tree shall be planted per 500 feet of landscape edge. The number of required trees shall be calculated solely on the area of the required landscape edge.~~

~~ii. Incentive Option: If utilizing the standards in Article 23, the landscape edge may be reduced to shall be a minimum width of 10 feet, exclusive of street rights-of-way. Within the landscape edge, one shade tree (3-inch caliper minimum) or an approved ornamental tree shall be planted per 500 square feet of landscape edge. The number of required trees shall be calculated solely on the area of the required landscape edge.~~

**Delete Subsection 17.200.3 (Landscaping Along Internal Property Lines) of Section 17.200 (Residential Landscaping Requirements) of Article 17 (Landscaping and Tree Preservation), such subsection to be deleted as follows:**

~~**.3 Landscaping Along Internal Property Lines**~~

~~A landscape edge must be provided adjacent to all internal property lines which are not adjacent to a right-of-way or street easement as follows:~~

~~A. Standard Option: A minimum 10-foot landscape must be provided. Within the landscape edge, 6-caliper inches of ornamental trees must be planted per 500 square feet of landscape edge with a minimum tree size of 2-inch caliper. The number of required trees must be calculated solely on the area of the required landscape edge.~~

~~B. Incentive Option: If utilizing the standards in Article 23, a landscape edge along internal property lines is not required.~~

**Amend Subsection 17.300.1 (Regulations for Specific Districts) of Section 17.300 (Overlay District Landscaping Requirements) of Article 17 (Landscaping and Tree Preservation), such portions of subsection to read as follows:**

**.1 Regulations for Specific Districts**

Development and redevelopment in the Preston Road, Dallas North Tollway, 190 Tollway/Plano Parkway, and State Highway 121 Overlay Districts must meet the regulations provided below.

A. A landscape edge must be provided as follows:

~~i. Standard Option: A minimum 40-foot wide landscape edge (as measured from the front property line exclusive of rights-of-way for thoroughfares Type C or above) must be provided. The landscape edge must not apply to that portion of the overlay district zoned~~

~~Central Business-1 at the time of development or redevelopment. This requirement is not intended to prohibit the placement of driveway openings as specified in the Thoroughfare Standards, Rules & Regulations. This landscape edge may be reduced by as much as 15 feet if the combined width of the unpaved right of way and the landscape edge is at least 40 feet. Such modifications may be permitted to accommodate variations in unpaved rights-of-way along the respective roadways due to grade-separated interchanges, turning lanes, transit stops, and drainage improvements. Underground utilities, or related facilities. The 40-foot distance shall be measured from the back of the permanent curb of the roadways including those existing or planned acceleration and deceleration lanes, loop road, and ramps at grade-separated interchange.~~

- ~~i.~~ **ii.** ~~Incentive Option: If utilizing the standards in Article 23, the landscape edge may be reduced to a~~ **A** ~~minimum 30-foot wide landscape edge (as measured from the front property line exclusive of rights-of-way for thoroughfares Type C or above) must be provided. If utilizing the standards in Article 23, t~~ **The** ~~landscape edge shall not apply to that portion of the overlay district zoned Central Business-1 at the time of development or redevelopment. This requirement is not intended to prohibit the placement of driveway openings as specified in the Thoroughfare Standards, Rules & Regulations. This landscape edge may be reduced by as much as 15 feet if the combined width of the unpaved right-of-way and the landscape edge is at least 40 feet. Such modifications may be permitted to accommodate variations in unpaved rights-of-way along the respective roadways due to grade-separated interchanges, turning lanes, transit stops, drainage improvements, underground utilities, or related facilities. The 40-foot distance shall be measured from the back of the permanent curb of the roadways including those existing or planned acceleration and deceleration lanes, loop road, and ramps at grade-separated interchanges. Sidewalks shall be calculated as part of the 40-foot distance.~~
  
- ~~ii.~~ **iii.** ~~The landscape edge must consist of trees, shrubs, groundcover, berms, and related elements as follows, except for the Dallas North Tollway Overlay District which must comply with Sec. 17.300.3:~~
  - ~~a.~~ **Standard Option:** ~~A minimum of two 3-inch caliper shade trees and two 3-inch caliper ornamental trees (7-foot planted height) placed per 50 feet of frontage, exclusive of driveways.~~
  
  - ~~a.~~ **b.** ~~Incentive Option: If utilizing the standards in Article 23, the landscape edge may be reduced to a~~ **A** ~~minimum of one 3-inch caliper shade tree and one 3-inch caliper ornamental tree (7-foot planted height) must be placed per 50 feet of frontage exclusive of driveways.~~
  
- ~~iv.~~ ~~A landscape edge must be provided adjacent to all internal property lines which are not adjacent to a right-of-way or street easement as follows:~~
  - ~~a.~~ **Standard Option:** ~~A minimum 10-foot landscape edge must be provided along all internal property lines. Within the landscape edge, 6 caliper inches of ornamental trees must be planted per 500 square feet of landscape edge with a minimum tree size of 2-inch caliper. The number of required trees must be calculated solely on the area of the required landscape edge.~~
  
  - ~~b.~~ **Incentive Option:** ~~If utilizing the standards in Article 23, a landscape edge along internal property lines is not required.~~

**Amend Subsection 17.300.6 (Parkway Overlay District) of Section 17.300 (Overlay District Landscaping Requirements) of Article 17 (Landscaping and Tree Preservation), such subsection to read in its entirety as follows:**

**.6 Parkway Overlay District**

Development and/or redevelopment in a Parkway Overlay district must meet the following special landscaping requirements:

**A. Landscape Edge**

- ~~i. Standard Option: A minimum 25-foot wide landscape edge (as measured from the front property line, exclusive of rights-of-way for thoroughfares Type C or above) must be provided. This requirement is not intended to prohibit the placement of driveway openings as specified in the Thoroughfare Standards, Rules & Regulations. With the exception of width, the landscape edge must comply with Article 17.~~
- ~~ii. Incentive Option: If utilizing the standards in Article 23, the landscape edge may be reduced to a A minimum 15-foot wide landscape edge (as measured from the front property line, exclusive of rights-of-way for thoroughfares Type C or above) must be provided. This requirement is not intended to prohibit the placement of driveway openings as specified in the Thoroughfare Standards, Rules & Regulations. With the exception of width, the landscape edge must comply with Article 17.~~
- ~~iii. A landscape edge must be provided adjacent to all internal property lines which are not adjacent to a right-of-way or street easement as follows:
  - ~~a. Standard Option: A minimum 10-foot landscape edge must be provided along internal property lines. Within the landscape edge, 6-caliber inches of ornamental trees must be planted per 500 square feet of landscape edge with a minimum tree size of 2-inch caliper. The number of required trees must be calculated solely on the area of the required landscape edge.~~
  - ~~b. Incentive Option: If utilizing the standards in Article 23, a landscape edge along internal property lines is not required.~~~~

**Delete Article 23 (Exterior Wall Construction Standards), such article to be deleted as follows:**

**Article 23 Exterior Wall Construction Standards [Reserved]**

**23.100 Introduction**

~~Exterior wall construction for structures must be in accordance with the standards of this article for consistency with community values of achieving high quality development and architectural compatibility. For the purposes of this article, exterior wall construction refers to the exterior material or finish of a wall assembly.~~

**23.200 Residential Structures**

~~The following shall apply to ensure architectural compatibility within the neighborhood. If these standards are not met by a minimum of 50% of the residential properties which share a lot line with the property, the standards may be waived by the Building Official, or designee. Right-of-way for streets 60 feet and smaller may be excluded in calculating shared lot lines so properties across streets and alleys are included.~~

- ~~.1 Exterior wall construction for residential structures and retirement and supportive housing must consist of a minimum of 80% masonry, 3-step stucco, and/or glass, with no single wall face of any~~

~~structure containing less than 50% of its exposed surface of masonry construction. A maximum of 10% of any exposed exterior wall may consist of Exterior Insulation and Finish Systems (EIFS).~~

- ~~.2 Unless specified as part of a planned development district, the above masonry requirements shall not apply to UR or GR districts, and exterior plasters are not permitted in UR districts.~~
- ~~.3 For midrise residential structures, a maximum of 50% of any exposed exterior wall may consist of metal.~~

### **23.300 Nonresidential Structures**

#### **.1 General**

~~Except for the LI 1 and LI 2 districts, and as otherwise regulated by this ordinance, exterior wall construction for nonresidential structures must consist of a minimum of 80% masonry, 3-step stucco, glass, or combination of these materials, with no single wall face of any structure containing less than 50% of its exposed surface of masonry construction. A maximum of 10% of any exposed exterior wall may consist of EIFS.~~

#### **.2 Metal Exterior Wall Construction**

~~Metal exterior wall construction within nonresidential zoning districts shall be permitted, provided that a maximum of 25% of any exposed exterior wall may consist of metal. This percentage may be exceeded in accordance with the following:~~

- ~~A. For buildings 55 feet in height and over, a maximum of 50% of any exposed exterior wall may consist of metal.~~
- ~~B. Within the LI 1 and LI 2 districts only, up to 100% of any exposed exterior wall may consist of metal with approval of a facade plan as part of the site plan review process by the Planning & Zoning Commission only under the following conditions:~~
  - ~~i. The metal exterior wall is not visible from a public thoroughfare or residential zoning district.~~
  - ~~ii. The lot containing the building is located at least 1,000 feet from any residential zoning district boundary line unless separated by a Type C or larger thoroughfare.~~

#### **.3 Special Requirements for Parking Structures**

~~Except in BG and CB-1 zoning districts, all exterior walls of parking structures must be architecturally designed to be integrated with the primary building on the site, including consistent architectural design elements and building materials between structures.~~

To view the hearing, please click on the provided link:

<https://planotx.new.swagit.com/videos/268562?ts=10340>

MK/kob

cc: Eric Hill, Assistant Director of Planning  
Christina Sebastian, Land Records Planning Manager  
Melissa Kleineck, Lead Planner  
Justin Cozart, GIS Technician  
Jeanna Scott, Building Inspections Manager  
Dorothy Alatorre, Sr. Administrative Assistant - Neighborhood Services



**AGENDA ITEM NO. 5A**

**PUBLIC HEARING:** Zoning Case 2023-012

**PETITIONER:** City of Plano

**DESCRIPTION:** Request to amend various sections of the Zoning Ordinance pertaining to recent state legislative actions and to ensure compliance with state law. Project #ZC2023-012.

**SUMMARY:**

The purpose of this request is to amend the Zoning Ordinance to align with recently adopted Texas House and Senate bills. The amendments will ensure compliance with state law and are in conformance with the recommendations of the Comprehensive Plan. Staff recommends approval as noted in the recommendation section below.

## STAFF PRELIMINARY REPORT - REMARKS

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On June 5, 2023 ([staff report](#) | [video](#)), the Planning & Zoning Commission called a public hearing to consider amendments to various sections of the Zoning Ordinance and Subdivision Ordinance pertaining to recent state legislative actions and to ensure compliance with state law.

The 88th Texas Legislature passed [House Bill 2127](#) (HB 2127) and [Senate Bill 929](#) (SB 929), which require ordinance updates. HB 2127 preempts municipalities from regulating certain areas of the law unless specifically allowed for within state law. SB 929 details procedures for when a nonconforming use is created and when a municipality requires a nonconforming use to stop.

Additionally, updates to recent legal standards and general practice in the state have prompted staff to revisit changes stemming from [House Bill 2439](#) (HB 2439), the Materials Bill, from the 2019 Legislative Session (86th Texas Legislature).

HB 2127 will become effective September 1, 2023. However, SB 929 became effective immediately. The bills are attached to this staff report for reference. The impacts and recommended changes have been reviewed for consistency with the statute by staff from the Planning and Engineering Departments and the City Attorney's Office.

### HB 2127 (Super Preemption Bill)

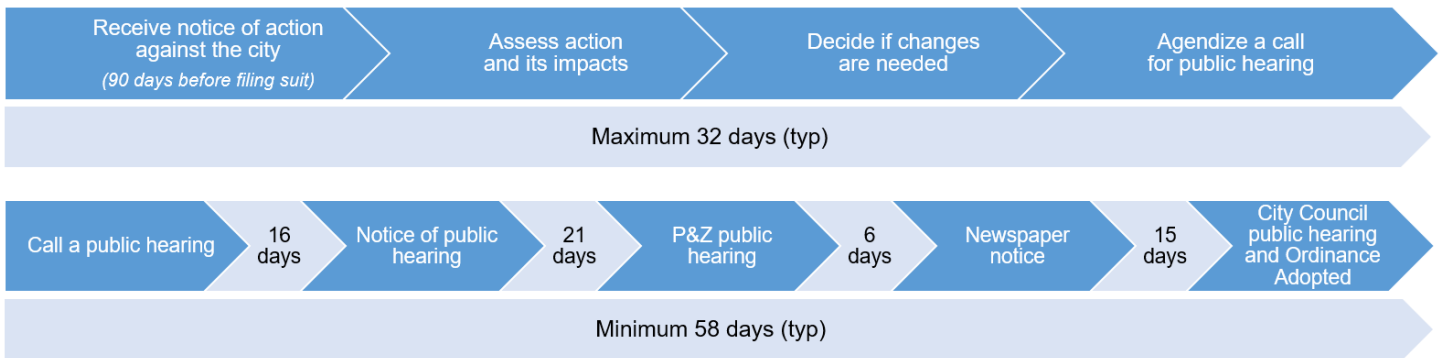
This bill seeks to provide statewide consistency in regulating commerce by returning regulatory powers to the state. The bill prohibits a municipality from adopting, enforcing, or maintaining an ordinance, order, or rule that regulates conduct in a field of regulation in the following codes:

- Agriculture Code
- Business & Commerce Code
- Finance Code
- Insurance Code
- Labor Code
- Local Government Code
- Natural Resource Code
- Occupations Code; or
- Property Code.

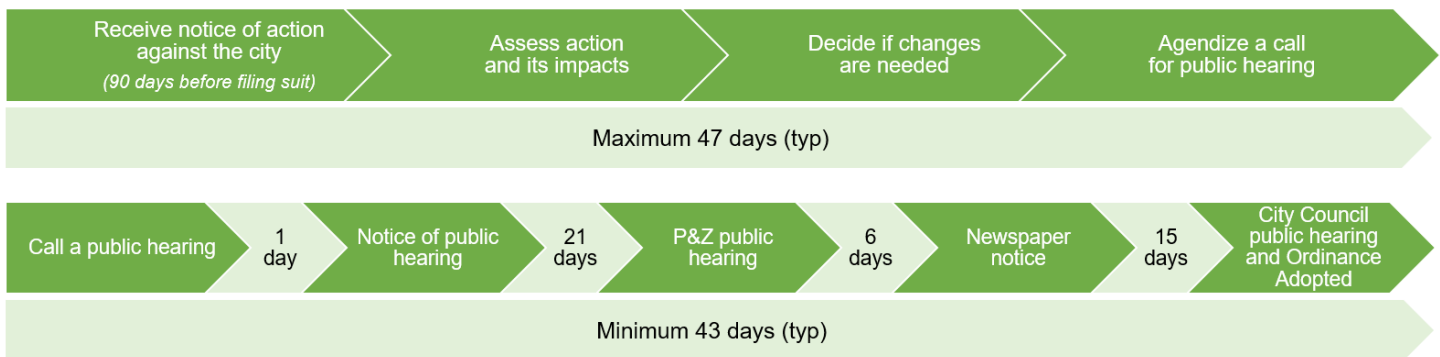
Additionally, the bill defines a process for which a claimant may bring an action against a municipality if they sustained injury from an ordinance, order, or rule adopted or enforced by a municipality which is in violation of the codes listed above.

While staff does not see a clear violation of this bill, should one be claimed, this bill allows municipalities an opportunity to repeal or amend an existing ordinance, order, or rule that violates the provisions of the bill. The bill requires persons bringing claims against municipalities for violations of the bill to provide notice of the claim to the municipality 90 days before bringing suit, which means the municipality can amend or repeal regulations to conform to state law during this time. However, the timeframes for Zoning Ordinance amendments are restricted due to state and city noticing requirements and a stipulation in the Zoning Ordinance currently prohibiting a public hearing from being held before the

Planning & Zoning Commission within 36 days from the date of filing the zoning petition. This requirement means it typically takes 58 days from the call for a public hearing to a hearing at City Council, and the city, therefore, has only 32 days to decide on what action to take, if any, after receiving notice of action against the city, as shown in the following graphic.



This amendment proposes to remove the 36-day requirement, reducing the typical timeframe from the call for public hearing to City Council public hearing to 43 days, allowing 47 days for the city to decide on what action to take, as shown in the following graphic.



While this timeframe is still somewhat short, it increases the time for analysis of the suit while still providing public notice of the request (which is not proposed to change). Additional time will also allow time for Council flexibility on the action taken, for instances in which they may need to table a case or remand it back to the Commission for additional consideration. When the city receives notice of action against the city, staff will bring cases for a call for public hearing as soon as feasible.

Note that under both scenarios, these schedules may there may be more or less time between the Commission and Council public hearings based on meeting schedules for both groups.

Article 4 (Planning & Zoning Commission Public Hearing) of the Zoning Ordinance is proposed to be amended to remove the 36-day requirement to comply with this new state law. Scheduling of public hearings will remain consistent with noticing requirements.

**SB 929 (Nonconformities)**

This bill adds an additional notice standard for zoning changes that may result in an existing use becoming nonconforming. Additionally, it provides for an amortization and appeal processes if a nonconforming use is required to stop operating by the municipality.

The additional noticing requirement is proposed to be added to Article 4 (Planning & Zoning Commission Public Hearing) to comply with this new state law. Additionally, the language in Article 7 (Nonconformities) regarding the continuance of a nonconforming use is proposed to be simplified, clearer, and in conformance with state law.

Due to the complexity of amortization, staff needs additional time to refine the proposed changes. Staff is proposing to call a public hearing to consider additional amendments to the Zoning Ordinance related to SB 929 as a separate zoning case.

### HB 2439 (Materials Bill)

This bill, passed in 2019 by the 86th Texas Legislature, impacted a municipality's authority to regulate building materials or products on a building's facades. The bill restricted municipalities from prohibiting any building product or material allowed by a national model code published within the last three code cycles. However, two exceptions could apply to Plano's zoning regulations:

1. Where the building is either a landmark or located in an area designated as a historic district at the national, state, or local level.
2. As a Certified Local Government, Plano may regulate exterior materials on buildings located in a place or area designated for historical, cultural, or architectural importance and significance under zoning.

As the full impacts of the bill were unclear at the time and still being debated amongst city officials across the state, Plano focused on adopting mitigating requirements through Zoning Case 2019-011 to lessen the impacts of legislation and offer an alternative incentive if developers or owners chose to follow building material standards, clarifying which areas of Plano are designated for historical, cultural, or architectural importance and significance consistent with the requirements of the legislation, and eliminate regulations where there was no exception to the bill. In the years since this bill became effective, cities around the Metroplex have conceded to allow only what materials are allowed under code. Most cities have not adopted similar regulations to Plano regarding incentives or architectural and cultural districts. Further, the incentive options adopted have proven difficult for redevelopment sites to meet but rather more appropriate for greenfield development, meaning they have not been frequently used since they were adopted.

Staff is proposing to remove standards added in 2019 as part of ZC2019-011 ([agenda item](#) | [video](#)), including Article 23 (Exterior Wall Construction Standards), as well as the associated incentive options to align closer with compliance with state law and the operations of other cities. Material standards and facade plans required within Planned Development districts will remain in effect as Planned Development districts are considered architecturally and culturally significant. Additionally, heritage district regulations will continue to apply to Plano's 35 local landmarks and two heritage districts, Downtown and Haggard Park.

## **STAFF PRELIMINARY REPORT - CONFORMANCE TO THE COMPREHENSIVE PLAN**

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The proposed request has been reviewed for conformance with the Comprehensive Plan.

**Guiding Principles** – The set of [Guiding Principles to the Comprehensive Plan](#) establishes overarching themes that apply to all policies and actions and express values for Plano Today, Plano 2050, and Plano Together. Since the principles do not stand alone but are used in concert with one another and carry across the Plan as a whole, each principle must be judged through a lens that incorporates all other principles to be fully and accurately understood. As such, the Commission is encouraged to review the full list of Guiding Principles and judge zoning requests through the lens of all principles.

**Land Use Action 1 (LU1)** – *Review and evaluate the Zoning Ordinance and make appropriate amendments based on guidance from the Comprehensive Plan.*

The proposed amendments will ensure compliance with state law. This request is in conformance with this action statement.

## **STAFF PRELIMINARY REPORT - ANALYSIS & RECOMMENDATION**

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### **SUMMARY:**

The purpose of this request is to amend the Zoning Ordinance to align with recently adopted Texas House and Senate bills. The amendments will ensure compliance with state law and are in conformance with the recommendations of the Comprehensive Plan. Staff recommends approval as noted in the recommendation below.

### **RECOMMENDATION:**

Recommended that the Planning & Zoning Commission:

- 1) Call an additional Public Hearing to consider further Zoning Ordinance amendments including amendments related to SB 929.
- 2) Approve Zoning Ordinance amendments as follows (additions are indicated in underlined text; deletions are indicated in ~~strike through~~ text).

**Amend Subsection 4.300.1 of Section 4.300 (Planning & Zoning Commission Public Hearing) of Article 4 (Amendments), such portions of section to read as follows:**

### **4.300 Planning & Zoning Commission Public Hearing**

- .1 Upon receipt of a complete written petition for zoning or for a change or an amendment to an existing provision of this Zoning Ordinance, the Planning Department staff will set a date for a public hearing before the Planning & Zoning Commission, consistent with applicable notice requirements. ~~In no case shall the public hearing be held within 36 days after the date of filing the written petition.~~

...

.5 The Planning & Zoning Commission must provide written notice of each public hearing regarding any proposed adoption of or change to a zoning regulation or boundary under which a current conforming use of a property is a nonconforming use if the regulation or boundary is adopted or changed. The notice must:

- a. Be mailed by United States mail to each owner of real or business personal property where the proposed nonconforming use is located as indicated by the most recently approved municipal tax roll and each occupant of the property not later than the 10th day before the hearing date;
- b. Contain the time and place of the hearing; and
- c. Include the following text in bold 14-point type or larger:

“THE CITY OF PLANO IS HOLDING A HEARING THAT WILL DETERMINE WHETHER YOU MAY LOSE THE RIGHT TO CONTINUE USING YOUR PROPERTY FOR ITS CURRENT USE, PLEASE READ THIS NOTICE CAREFULLY.”

.6 **5** Properties located within 500 feet of a proposed change in a zoning classification, which do not receive a notice as required by Sec. 4.300.4, a written courtesy notice will be sent to each owner of real property, as indicated by the most recently approved municipal tax roll, before the 20th day before the hearing. A courtesy notice shall also be sent to properties located within 500 feet of the property on which the change is proposed, which do not receive a notice as required by Sec. 4.300.4 where located in territory annexed to the municipality and not included on the most recently approved municipal tax roll. The courtesy notice may be served by its deposit in the municipality, properly addressed with postage paid, in the United States mail.

.7 **6** The Planning & Zoning Commission shall hold a public hearing on any petition for any amendment or change prior to making its recommendation and report to the City Council. The Planning & Zoning Commission may establish such regulations and restrictions regarding the presentation of a zoning case at the public hearing as they may deem necessary.

**Amend Article 7 (Nonconformities), such portions of article to read as follows:**

...

### **7.200 Continuance**

Any A person using a property in a manner considered to be a nonconforming use of land or structures as a result of the adoption of or change to a zoning regulation or boundary may be continued (for indefinite periods of time) to use the property in the same manner unless required by the city to stop subject to such regulations as the Board of Adjustment may require for immediate preservation of the adjoining property prior to the ultimate removal of the nonconforming use of the property.

### **7.300 Change of Use**

The Building Official Director of Planning may grant a change of occupancy from one nonconforming use to another, providing the use is within the same, or higher or more restricted classification as the original nonconforming use. In the event a nonconforming use of a building may be changed to another nonconforming use of more restricted classification, it shall not later be changed to a less restrictive

classification of use and the prior less restrictive classification shall be considered to have been abandoned.

...

**Amend a portion of Subsection 10.900.3 (Area, Yard, and Bulk Requirements) of Section 10.900 (CB-1, Central Business-1 District) of Article 10 (Nonresidential Districts), such portion of subsection to read as follows:**

Description	Residential Requirement	Nonresidential Requirement
Minimum Open Space	<del>See Sec. 10.900.5A.viii</del> 100 square feet per unit	None

**Amend Part A (Miscellaneous) of Subsection 10.900.5 (Special District Requirements) of Section 10.900 (CB-1, Central Business-1 District) of Article 10 (Nonresidential Districts), such portions of part to read as follows:**

**A. Miscellaneous**

...

~~viii. Minimum usable open space must be calculated as follows:~~

~~a. Standard Option: 200 square feet per unit~~

~~b. Incentive Option: If utilizing the standards in Article 23, the minimum usable open space may be reduced to 100 square feet per unit.~~

~~viii~~ **ix.** Sites for fire stations, police stations, schools, water towers, and reservoirs shall be provided at such time, if ever, as such sites are determined to be necessary.

**Amend Subsection 10.1100.1 (Purpose) of Section 10.1100 (RC, Regional Commercial District) of Article 10 (Nonresidential Districts), such subsection to read in its entirety as follows:**

**.1 Purpose**

The RC district is an architectural and cultural district intended for use in conjunction with an RE district in high visibility locations which are of regional cultural and architectural importance to the community due to its significance for generating economic investment. It provides for retail and service uses at appropriate nodes within the corridor of specified tollways and expressways serving Plano and surrounding communities, in addition to office and limited manufacturing uses. The district's standards are designed to ensure compatibility between various uses within a corridor and surrounding residential neighborhoods.

**Amend Subsection 10.1200.1 (Purpose) of Section 10.1200 (RE, Regional Employment District) of Article 10 (Nonresidential Districts), such subsection to read in its entirety as follows:**

**.1 Purpose**

The RE district is an architectural and cultural district intended to provide for office and limited manufacturing uses in high visibility locations which are of regional cultural and architectural importance to the community due to its significance for generating economic investment that are

consistent with the regional status of certain tollways and expressways serving Plano and surrounding communities. Some retail uses are also appropriate when developed in conjunction with the primary uses. The district's standards are designed to ensure compatibility between the various uses within a corridor and surrounding residential neighborhoods.

**Amend Subsection 12.100.5 of Section 12.100 (Purpose) of Article 12 (Planned Development Districts), such subsection to read in its entirety as follows:**

- .5 To protect and enhance the aesthetic and visual quality of development by creating architectural and cultural districts intended to provide for unique locations which are of architectural and cultural importance to the community.

**Amend Part A of Subsection 17.100.1 (Landscaping along Street Rights-of-Way) of Section 17.100 (Nonresidential Landscaping Requirements) of Article 17 (Landscaping and Tree Preservation), such portions of part to read as follows:**

A. A landscape edge must be provided adjacent to all streets, ~~as follows:~~

- ~~i. Standard Option: The landscape edge must be a minimum width of 20 feet, exclusive of rights-of-way. Within the landscape edge, 6 caliper inches of shade trees or 12 caliper inches of ornamental trees must be planted per 500 square feet of landscape edge with a minimum tree size of 2-inch caliper. The number of required trees must be calculated solely on the area of the required landscape edge. See Figure 17-1.~~
- ~~ii. Incentive Option: If utilizing the standards in Article 23, the The landscape edge may be reduced to must be a minimum width of 10 feet, exclusive of street rights-of-way. Within the landscape edge, 3 caliper inches of shade trees or 6 caliper inches of ornamental trees must be planted per 500 square feet of landscape edge with a minimum tree size of 2-inch caliper. The number of required trees must be calculated solely on the area of the required landscape edge. See Figure 17-1.~~

...

**Amend Part B of Subsection 17.100.3 (Landscaping for Corner Lots) of Section 17.100 (Nonresidential Landscaping Requirements) of Article 17 (Landscaping and Tree Preservation), such part to read in its entirety as follows:**

B. For corner lots, a landscape edge ~~must be provided adjacent to all streets as follows:~~

- ~~i. Standard Option: A minimum 20-foot wide landscape edge must be located along all street right-of-way lines beginning at the corner and extending 175 feet or to the closest driveway. Beyond this point, the landscape edge may be gradually reduced (over a distance of 25 feet) to 10 feet in width.~~
- ~~ii. Incentive Option: If utilizing the standards in Article 23, the landscape edge may be reduced to a minimum 15-foot wide landscape edge must be located along all street right-of-way lines beginning at the corner and extending 175 feet or to the closest driveway. Beyond this point, the landscape edge may be gradually reduced (over a distance of 25 feet) to 10 feet in width. Figure 17-3.~~



**Delete Subsection 17.100.6 (Landscaping along Internal Property Lines) of Section 17.100 (Nonresidential Landscaping Requirements) of Article 17 (Landscaping and Tree Preservation), such subsection to be deleted as follows:**

**~~.6 Landscaping along Internal Property Lines~~**

~~A landscape edge must be provided adjacent to all internal property lines which are not adjacent to a right-of-way or street easement as follows:~~

~~A. Standard Option: A minimum 10-foot landscape edge must be provided. Within the landscape edge, 6-caliper inches of ornamental trees must be planted per 500 square feet of landscape edge with a minimum tree size of 2-inch caliper. The number of required trees must be calculated solely on the area of the required landscape edge.~~

~~B. Incentive Option: If utilizing the standards in Article 23, a landscape edge along internal property lines is not required.~~

**Amend Part A of Subsection 17.200.1 (Multifamily, Retirement, and Supportive Housing Landscaping Requirements) of Section 17.200 (Residential Landscaping Requirements) of Article 17 (Landscaping and Tree Preservation), such part to read in its entirety as follows:**

**A. A landscape edge must be provided adjacent to all streets, as follows:**

~~i. Standard Option: The landscape edge shall be a minimum width of 20 feet, exclusive of rights-of-way. Within the landscape edge, two shade trees (3-inch caliper minimum) or an approved ornamental tree shall be planted per 500 feet of landscape edge. The number of required trees shall be calculated solely on the area of the required landscape edge.~~

~~ii. Incentive Option: If utilizing the standards in Article 23, the The landscape edge may be reduced to shall be a minimum width of 10 feet, exclusive of street rights-of-way. Within the landscape edge, one shade tree (3-inch caliper minimum) or an approved ornamental tree shall be planted per 500 square feet of landscape edge. The number of required trees shall be calculated solely on the area of the required landscape edge.~~

**Delete Subsection 17.200.3 (Landscaping Along Internal Property lines) of Section 17.200 (Residential Landscaping Requirements) of Article 17 (Landscaping and Tree Preservation), such subsection to be deleted as follows:**

**~~.3 Landscaping Along Internal Property Lines~~**

~~A landscape edge must be provided adjacent to all internal property lines which are not adjacent to a right-of-way or street easement as follows:~~

~~A. Standard Option: A minimum 10-foot landscape must be provided. Within the landscape edge, 6-caliper inches of ornamental trees must be planted per 500 square feet of landscape edge with a minimum tree size of 2-inch caliper. The number of required trees must be calculated solely on the area of the required landscape edge.~~

~~B. Incentive Option: If utilizing the standards in Article 23, a landscape edge along internal property lines is not required.~~

**Amend Subsection 17.300.1 (Regulations for Specific Districts) of Section 17.300 (Overlay District Landscaping Requirements) of Article 17 (Landscaping and Tree Preservation), such portions of subsection to read as follows:**

**.1 Regulations for Specific Districts**

Development and redevelopment in the Preston Road, Dallas North Tollway, 190 Tollway/Plano Parkway, and State Highway 121 Overlay Districts must meet the regulations provided below.

**A.** A landscape edge must be provided as follows:

~~i. Standard Option: A minimum 40-foot wide landscape edge (as measured from the front property line exclusive of rights-of-way for thoroughfares Type C or above) must be provided. The landscape edge must not apply to that portion of the overlay district zoned Central Business-1 at the time of development or redevelopment. This requirement is not intended to prohibit the placement of driveway openings as specified in the Thoroughfare Standards, Rules & Regulations. This landscape edge may be reduced by as much as 15 feet if the combined width of the unpaved right-of-way and the landscape edge is at least 40 feet. Such modifications may be permitted to accommodate variations in unpaved rights-of-way along the respective roadways due to grade-separated interchanges, turning lanes, transit stops, and drainage improvements. Underground utilities, or related facilities. The 40-foot distance shall be measured from the back of the permanent curb of the roadways including those existing or planned acceleration and deceleration lanes, loop road, and ramps at grade-separated interchange.~~

~~i. ii. Incentive Option: If utilizing the standards in Article 23, the landscape edge may be reduced to a A minimum 30-foot wide landscape edge (as measured from the front property line exclusive of rights-of-way for thoroughfares Type C or above) must be provided. If utilizing the standards in Article 23, t The landscape edge shall not apply to that portion of the overlay district zoned Central Business-1 at the time of development or redevelopment. This requirement is not intended to prohibit the placement of driveway openings as specified in the Thoroughfare Standards, Rules & Regulations. This landscape edge may be reduced by as much as 15 feet if the combined width of the unpaved right-of-way and the landscape edge is at least 40 feet. Such modifications may be permitted to accommodate variations in unpaved rights-of-way along the respective roadways due to grade-separated interchanges, turning lanes, transit stops, drainage improvements, underground utilities, or related facilities. The 40-foot distance shall be measured from the back of the permanent curb of the roadways including those existing or planned acceleration and deceleration lanes, loop road, and ramps at grade-separated interchanges. Sidewalks shall be calculated as part of the 40-foot distance.~~

~~ii. iii. The landscape edge must consist of trees, shrubs, groundcover, berms, and related elements as follows, except for the Dallas North Tollway Overlay District which must comply with Sec. 17.300.3:~~

~~a. Standard Option: A minimum of two 3-inch caliper shade trees and two 3-inch caliper ornamental trees (7-foot planted height) placed per 50 feet of frontage, exclusive of driveways.~~

~~a. b. Incentive Option: If utilizing the standards in Article 23, the landscape edge may be reduced to a A minimum of one 3-inch caliper shade tree and one 3-inch caliper~~

ornamental tree (7-foot planted height) must be placed per 50 feet of frontage exclusive of driveways.

- ~~iv. A landscape edge must be provided adjacent to all internal property lines which are not adjacent to a right-of-way or street easement as follows:~~
  - ~~a. Standard Option: A minimum 10-foot landscape edge must be provided along all internal property lines. Within the landscape edge, 6-caliber inches of ornamental trees must be planted per 500-square feet of landscape edge with a minimum tree size of 2-inch caliber. The number of required trees must be calculated solely on the area of the required landscape edge.~~
  - ~~b. Incentive Option: If utilizing the standards in Article 23, a landscape edge along internal property lines is not required.~~

...

**Amend Subsection 17.300.6 (Parkway Overlay District) of Section 17.300 (Overlay District Landscaping Requirements) of Article 17 (Landscaping and Tree Preservation), such subsection to read in its entirety as follows:**

#### **.6 Parkway Overlay District**

Development and/or redevelopment in a Parkway Overlay district must meet the following special landscaping requirements:

##### **A. Landscape Edge**

- ~~i. Standard Option: A minimum 25-foot wide landscape edge (as measured from the front property line, exclusive of rights-of-way for thoroughfares Type C or above) must be provided. This requirement is not intended to prohibit the placement of driveway openings as specified in the Thoroughfare Standards, Rules & Regulations. With the exception of width, the landscape edge must comply with Article 17.~~
- ~~ii. Incentive Option: If utilizing the standards in Article 23, the landscape edge may be reduced to a A minimum 15-foot wide landscape edge (as measured from the front property line, exclusive of rights-of-way for thoroughfares Type C or above) must be provided. This requirement is not intended to prohibit the placement of driveway openings as specified in the Thoroughfare Standards, Rules & Regulations. With the exception of width, the landscape edge must comply with Article 17.~~
- ~~iii. A landscape edge must be provided adjacent to all internal property lines which are not adjacent to a right-of-way or street easement as follows:~~
  - ~~a. Standard Option: A minimum 10-foot landscape edge must be provided along internal property lines. Within the landscape edge, 6-caliber inches of ornamental trees must be planted per 500-square feet of landscape edge with a minimum tree size of 2-inch caliber. The number of required trees must be calculated solely on the area of the required landscape edge.~~

- b. ~~Incentive Option: If utilizing the standards in Article 23, a landscape edge along internal property lines is not required.~~

**Delete Article 23 (Exterior Wall Construction Standards), such article to be deleted as follows:**

**Article 23 Exterior Wall Construction Standards [Reserved]**

**23.100 — Introduction**

~~Exterior wall construction for structures must be in accordance with the standards of this article for consistency with community values of achieving high quality development and architectural compatibility. For the purposes of this article, exterior wall construction refers to the exterior material or finish of a wall assembly.~~

**23.200 — Residential Structures**

~~The following shall apply to ensure architectural compatibility within the neighborhood. If these standards are not met by a minimum of 50% of the residential properties which share a lot line with the property, the standards may be waived by the Building Official, or designee. Right of way for streets 60 feet and smaller may be excluded in calculating shared lot lines so properties across streets and alleys are included.~~

- ~~.1 Exterior wall construction for residential structures and retirement and supportive housing must consist of a minimum of 80% masonry, 3-step stucco, and/or glass, with no single wall face of any structure containing less than 50% of its exposed surface of masonry construction. A maximum of 10% of any exposed exterior wall may consist of Exterior Insulation and Finish Systems (EIFS).~~
- ~~.2 Unless specified as part of a planned development district, the above masonry requirements shall not apply to UR or GR districts, and exterior plasters are not permitted in UR districts.~~
- ~~.3 For midrise residential structures, a maximum of 50% of any exposed exterior wall may consist of metal.~~

**23.300 — Nonresidential Structures**

**.1 General**

Except for the LI-1 and LI-2 districts, and as otherwise regulated by this ordinance, exterior wall construction for nonresidential structures must consist of a minimum of 80% masonry, 3-step stucco, glass, or combination of these materials, with no single wall face of any structure containing less than 50% of its exposed surface of masonry construction. A maximum of 10% of any exposed exterior wall may consist of EIFS.

**.2 Metal Exterior Wall Construction**

Metal exterior wall construction within nonresidential zoning districts shall be permitted, provided that a maximum of 25% of any exposed exterior wall may consist of metal. This percentage may be exceeded in accordance with the following:

~~A. For buildings 55 feet in height and over, a maximum of 50% of any exposed exterior wall may consist of metal.~~

~~B. Within the LI-1 and LI-2 districts only, up to 100% of any exposed exterior wall may consist of metal with approval of a facade plan as part of the site plan review process by the Planning & Zoning Commission only under the following conditions:~~

~~i. The metal exterior wall is not visible from a public thoroughfare or residential zoning district.~~

~~ii. The lot containing the building is located at least 1,000 feet from any residential zoning district boundary line unless separated by a Type C or larger thoroughfare.~~

### ~~.3 **Special Requirements for Parking Structures**~~

~~Except in BG and CB-1 zoning districts, all exterior walls of parking structures must be architecturally designed to be integrated with the primary building on the site, including consistent architectural design elements and building materials between structures.~~



1 regulations that a general-law municipality is authorized to  
2 provide or impose;

3 (3) does not, except as expressly provided by this  
4 Act, affect the authority of a municipality to adopt, enforce, or  
5 maintain an ordinance or rule that relates to the control, care,  
6 management, welfare, or health and safety of animals;

7 (4) does not affect the authority of a municipality or  
8 county to conduct a public awareness campaign;

9 (5) does not affect the authority of a municipality or  
10 county to:

11 (A) enter into or negotiate terms of a collective  
12 bargaining agreement with its employees; or

13 (B) adopt a policy related to its employees; and

14 (6) does not affect the authority of a municipality or  
15 county to repeal or amend an existing ordinance, order, or rule that  
16 violates the provisions of this Act for the limited purpose of  
17 bringing that ordinance, order, or rule in compliance with this  
18 Act.

19 SECTION 5. Chapter 1, Agriculture Code, is amended by  
20 adding Section 1.004 to read as follows:

21 Sec. 1.004. PREEMPTION. Unless expressly authorized by  
22 another statute, a municipality or county may not adopt, enforce,  
23 or maintain an ordinance, order, or rule regulating conduct in a  
24 field of regulation that is occupied by a provision of this code.  
25 An ordinance, order, or rule that violates this section is void,  
26 unenforceable, and inconsistent with this code.

27 SECTION 6. Subchapter A, Chapter 1, Business & Commerce

1 Code, is amended by adding Section 1.109 to read as follows:

2 Sec. 1.109. PREEMPTION. Unless expressly authorized by  
3 another statute, a municipality or county may not adopt, enforce,  
4 or maintain an ordinance, order, or rule regulating conduct in a  
5 field of regulation that is occupied by a provision of this code.  
6 An ordinance, order, or rule that violates this section is void,  
7 unenforceable, and inconsistent with this code.

8 SECTION 7. Title 5, Civil Practice and Remedies Code, is  
9 amended by adding Chapter 102A to read as follows:

10 CHAPTER 102A. MUNICIPAL AND COUNTY LIABILITY FOR CERTAIN  
11 REGULATION

12 Sec. 102A.001. DEFINITION. In this chapter, "person" means  
13 an individual, corporation, business trust, estate, trust,  
14 partnership, limited liability company, association, joint  
15 venture, agency or instrumentality, public corporation, any legal  
16 or commercial entity, or protected or registered series of a  
17 for-profit entity.

18 Sec. 102A.002. LIABILITY FOR CERTAIN REGULATION. Any  
19 person who has sustained an injury in fact, actual or threatened,  
20 from a municipal or county ordinance, order, or rule adopted or  
21 enforced by a municipality or county in violation of any of the  
22 following provisions or a trade association representing the person  
23 has standing to bring and may bring an action against the  
24 municipality or county:

25 (1) Section 1.004, Agriculture Code;

26 (2) Section 1.109, Business & Commerce Code;

27 (3) Section 1.004, Finance Code;



- 1           (4) Section 30.005, Insurance Code;
- 2           (5) Section 1.005, Labor Code;
- 3           (6) Section 229.901, Local Government Code;
- 4           (7) Section 1.003, Natural Resources Code;
- 5           (8) Section 1.004, Occupations Code; or
- 6           (9) Section 1.004, Property Code.

7           Sec. 102A.003. REMEDIES. (a) A claimant is entitled to  
8 recover in an action brought under this chapter:

- 9           (1) declaratory and injunctive relief; and
- 10          (2) costs and reasonable attorney's fees.

11          (b) A municipality or county is entitled to recover in an  
12 action brought under this chapter costs and reasonable attorney's  
13 fees if the court finds the action to be frivolous.

14          Sec. 102A.004. IMMUNITY WAIVER. Governmental immunity of a  
15 municipality or county to suit and from liability is waived to the  
16 extent of liability created by this chapter.

17          Sec. 102A.005. NOTICE. A municipality or county is  
18 entitled to receive notice of a claim against it under this chapter  
19 not later than three months before the date a claimant files an  
20 action under this chapter. The notice must reasonably describe:

- 21          (1) the injury claimed; and
- 22          (2) the ordinance, order, or rule that is the cause of  
23 the injury.

24          Sec. 102A.006. VENUE. (a) Notwithstanding any other law,  
25 including Chapter 15, a claimant may bring an action under this  
26 chapter in:

- 27          (1) the county in which all or a substantial part of

1 the events giving rise to the cause of action occurred; or

2 (2) if the defendant is a municipality, a county in  
3 which the municipality is located.

4 (b) If the action is brought in a venue authorized by this  
5 section, the action may not be transferred to a different venue  
6 without the written consent of all parties.

7 SECTION 8. Chapter 1, Finance Code, is amended by adding  
8 Section 1.004 to read as follows:

9 Sec. 1.004. PREEMPTION. (a) Unless expressly authorized  
10 by another statute and except as provided by Subsection (b), a  
11 municipality or county may not adopt, enforce, or maintain an  
12 ordinance, order, or rule regulating conduct in a field of  
13 regulation that is occupied by a provision of this code. An  
14 ordinance, order, or rule that violates this section is void,  
15 unenforceable, and inconsistent with this code.

16 (b) A municipality or county may enforce or maintain an  
17 ordinance, order, or rule regulating any conduct under Chapter 393  
18 and any conduct related to a credit services organization, as  
19 defined by Section 393.001 or by any other provision of this code,  
20 or a credit access business, as defined by Section 393.601 or by any  
21 other provision of this code, if:

22 (1) the municipality or county adopted the ordinance,  
23 order, or rule before January 1, 2023; and

24 (2) the ordinance, order, or rule would have been  
25 valid under the law as it existed before the date this section was  
26 enacted.

27 SECTION 9. Chapter 30, Insurance Code, is amended by adding

1 Section 30.005 to read as follows:

2 Sec. 30.005. PREEMPTION. Unless expressly authorized by  
3 another statute, a municipality or county may not adopt, enforce,  
4 or maintain an ordinance, order, or rule regulating conduct in a  
5 field of regulation that is occupied by a provision of this code.  
6 An ordinance, order, or rule that violates this section is void,  
7 unenforceable, and inconsistent with this code.

8 SECTION 10. Chapter 1, Labor Code, is amended by adding  
9 Section 1.005 to read as follows:

10 Sec. 1.005. PREEMPTION. (a) Unless expressly authorized  
11 by another statute, a municipality or county may not adopt,  
12 enforce, or maintain an ordinance, order, or rule regulating  
13 conduct in a field of regulation that is occupied by a provision of  
14 this code. An ordinance, order, or rule that violates this section  
15 is void, unenforceable, and inconsistent with this code.

16 (b) For purposes of Subsection (a), a field occupied by a  
17 provision of this code includes employment leave, hiring practices,  
18 breaks, employment benefits, scheduling practices, and any other  
19 terms of employment that exceed or conflict with federal or state  
20 law for employers other than a municipality or county.

21 SECTION 11. Subchapter A, Chapter 51, Local Government  
22 Code, is amended by adding Section 51.002 to read as follows:

23 Sec. 51.002. ORDINANCE OR RULES INCONSISTENT WITH STATE LAW  
24 PROHIBITED. Notwithstanding Section 51.001, the governing body of  
25 a municipality may adopt, enforce, or maintain an ordinance or rule  
26 only if the ordinance or rule is consistent with the laws of this  
27 state.

1 SECTION 12. Chapter 229, Local Government Code, is amended  
2 by adding Subchapter Z to read as follows:

3 SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

4 Sec. 229.901. AUTHORITY TO REGULATE ANIMAL BUSINESSES. (a)

5 A municipality may not adopt, enforce, or maintain an ordinance or  
6 rule that restricts, regulates, limits, or otherwise impedes a  
7 business involving the breeding, care, treatment, or sale of  
8 animals or animal products, including a veterinary practice, or the  
9 business's transactions if the person operating that business holds  
10 a license for the business that is issued by the federal government  
11 or a state.

12 (b) Except as provided by this subsection, a municipality  
13 may not adopt, enforce, or maintain an ordinance or rule that  
14 restricts, regulates, limits, or otherwise impedes the retail sale  
15 of dogs or cats. A municipality may enforce or maintain an  
16 ordinance or rule adopted before April 1, 2023, that restricts,  
17 regulates, limits, or otherwise impedes the retail sale of dogs or  
18 cats until the state adopts statewide regulation for the retail  
19 sale of dogs or cats, as applicable.

20 SECTION 13. Chapter 1, Natural Resources Code, is amended  
21 by adding Section 1.003 to read as follows:

22 Sec. 1.003. PREEMPTION. Unless expressly authorized by  
23 another statute, a municipality or county may not adopt, enforce,  
24 or maintain an ordinance, order, or rule regulating conduct in a  
25 field of regulation that is occupied by a provision of this code.  
26 An ordinance, order, or rule that violates this section is void,  
27 unenforceable, and inconsistent with this code.

1 SECTION 14. Chapter 1, Occupations Code, is amended by  
2 adding Section 1.004 to read as follows:

3 Sec. 1.004. PREEMPTION. (a) Unless expressly authorized  
4 by another statute, a municipality or county may not adopt,  
5 enforce, or maintain an ordinance, order, or rule regulating  
6 conduct in a field of regulation that is occupied by a provision of  
7 this code. An ordinance, order, or rule that violates this section  
8 is void, unenforceable, and inconsistent with this code.

9 (b) Subsection (a) may not be construed to affect municipal  
10 or county authority to regulate a massage establishment in  
11 accordance with Section 455.005.

12 SECTION 15. Chapter 1, Property Code, is amended by adding  
13 Section 1.004 to read as follows:

14 Sec. 1.004. PREEMPTION. (a) Unless expressly authorized  
15 by another statute, a municipality or county may not adopt,  
16 enforce, or maintain an ordinance, order, or rule regulating  
17 conduct in a field of regulation that is occupied by a provision of  
18 this code. An ordinance, order, or rule that violates this section  
19 is void, unenforceable, and inconsistent with this code.

20 (b) For purposes of Subsection (a), a field occupied by a  
21 provision of this code includes an ordinance, order, or rule  
22 regulating evictions or otherwise prohibiting, restricting, or  
23 delaying delivery of a notice to vacate or filing a suit to recover  
24 possession of the premises under Chapter 24.

25 SECTION 16. Chapter 102A, Civil Practice and Remedies Code,  
26 as added by this Act, applies only to a cause of action that accrues  
27 on or after the effective date of this Act.

1           SECTION 17. This Act takes effect immediately if it  
2 receives a vote of two-thirds of all the members elected to each  
3 house, as provided by Section 39, Article III, Texas Constitution.  
4 If this Act does not receive the vote necessary for immediate  
5 effect, this Act takes effect September 1, 2023.

H.B. No. 2127

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President of the Senate

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Speaker of the House

I certify that H.B. No. 2127 was passed by the House on April 19, 2023, by the following vote: Yeas 92, Nays 55, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2127 on May 19, 2023, by the following vote: Yeas 84, Nays 58, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 2127 was passed by the Senate, with amendments, on May 16, 2023, by the following vote: Yeas 18, Nays 13.

---

Secretary of the Senate

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

Date

---

Governor

Exhibit B

S.B. No. 929

1 AN ACT  
2 relating to the notice and compensation a municipality must provide  
3 before revoking the right to use property for a use that was allowed  
4 before the adoption of or change to a zoning regulation or boundary.

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

6 SECTION 1. Section 211.006, Local Government Code, is  
7 amended by adding Subsection (a-1) to read as follows:

8 (a-1) In addition to any notice required by this section or  
9 Section 211.007, the governing body of a municipality or a zoning  
10 commission, as applicable, shall provide written notice of each  
11 public hearing regarding any proposed adoption of or change to a  
12 zoning regulation or boundary under which a current conforming use  
13 of a property is a nonconforming use if the regulation or boundary  
14 is adopted or changed. The notice must:

15 (1) be mailed by United States mail to each owner of  
16 real or business personal property where the proposed nonconforming  
17 use is located as indicated by the most recently approved municipal  
18 tax roll and each occupant of the property not later than the 10th  
19 day before the hearing date;

20 (2) contain the time and place of the hearing; and

21 (3) include the following text in bold 14-point type or  
22 larger:

23 "THE [MUNICIPALITY NAME] IS HOLDING A HEARING THAT  
24 WILL DETERMINE WHETHER YOU MAY LOSE THE RIGHT TO



1 CONTINUE USING YOUR PROPERTY FOR ITS CURRENT USE.

2 PLEASE READ THIS NOTICE CAREFULLY."

3 SECTION 2. Subchapter A, Chapter 211, Local Government  
4 Code, is amended by adding Section 211.019 to read as follows:

5 Sec. 211.019. NONCONFORMING LAND USE. (a) In this section,  
6 "market value" means the price the sale of the property would bring  
7 in an arms-length transaction when offered for sale by one who  
8 wishes, but is not obliged, to sell and when bought by one who is  
9 under no necessity of buying it.

10 (b) A person using a property in a manner considered to be a  
11 nonconforming use as a result of the adoption of or change to a  
12 zoning regulation or boundary may continue to use the property in  
13 the same manner unless required by a municipality to stop the  
14 nonconforming use of the property.

15 (c) A requirement imposed by a municipality to stop a  
16 nonconforming use of a property under this section includes:

17 (1) an official action by the governing body of the  
18 municipality or a board, commission, department, or official of  
19 the municipality; or

20 (2) a determination by the municipality that a  
21 nonconforming use has an adverse effect or other necessary  
22 determination that a municipality must make before imposing a  
23 requirement to stop a nonconforming use under applicable law.

24 (d) If a municipality requires a property owner or lessee to  
25 stop the nonconforming use of a property as described by Subsection  
26 (b), the owner or lessee of the property is entitled to:

27 (1) payment from the municipality in an amount equal

1 to the sum of:

2 (A) the costs incurred by the owner or lessee of  
3 the property that are directly attributable to ceasing the  
4 nonconforming use of the property, including expenses related to  
5 demolition, relocation, termination of a lease, or discharge of a  
6 mortgage; and

7 (B) an amount equal to the greater of, as  
8 determined by the municipality, the diminution in the market value  
9 of the property, computed by subtracting the current market value  
10 of the property after the imposition of a requirement to stop the  
11 nonconforming use of the property from:

12 (i) the market value of the property on the  
13 day before the date the notice was given under Section  
14 211.006(a-1); or

15 (ii) the market value of the property on the  
16 day before a person submits an application or request to the  
17 municipality to require or the municipality otherwise requires a  
18 person to stop using the property in a manner that is a  
19 nonconforming use as described by Subsection (b); or

20 (2) continued nonconforming use of the property until  
21 the owner or lessee recovers the amount determined under  
22 Subdivision (1) through the owner or lessee's continued business  
23 activities according to generally accepted accounting principles.

24 (e) Not later than the 10th day after the date a  
25 municipality imposes a requirement to stop a nonconforming use of a  
26 property under this section, the municipality shall give written  
27 notice to each owner or lessee of the property, as indicated by the

1 most recently approved municipal tax roll, who is required to stop a  
2 nonconforming use of the property of the requirement and of the  
3 remedies which an owner or lessee of the property is entitled to  
4 under Subsection (d).

5 (f) The owner or lessee of a property that is subject to a  
6 requirement to stop a nonconforming use of the property under this  
7 section shall not later than the 30th day after the date the  
8 municipality gives the notice required by Subsection (e) respond in  
9 writing to the municipality indicating the remedy under Subsection  
10 (d) chosen by the owner or lessee. In the event of a conflict in the  
11 choice of remedy by the owner and a lessee of the property, the  
12 owner's choice of remedy shall control. In the event of a conflict  
13 in the choice of remedy by the owners of a property that has more  
14 than one owner, the choice of remedy made by an owner or owners  
15 holding the greater ownership interest in the property shall  
16 control. If the municipality does not receive timely notice from an  
17 owner or lessee, the municipality may choose the remedy provided  
18 under this section.

19 (g) A person receiving a payment under Subsection (d)(1)  
20 must stop the nonconforming use not later than the 10th day after  
21 the date of the payment.

22 (h) A person who continues the nonconforming use under  
23 Subsection (d)(2) must stop the nonconforming use immediately on  
24 the recovery of the amount determined under Subsection (d)(1).

25 (i) If more than one person seeks a payment from the  
26 municipality under Subsection (d)(1), the municipality shall  
27 apportion the payment between each person based on the market value

1 of the person's interest in the property. A person may appeal the  
2 apportionment in the manner provided by this section.

3 (j) A person entitled to a remedy under this section may  
4 appeal a determination under Subsection (d)(1) or (2) to the board  
5 of adjustment of the municipality not later than the 20th day after  
6 the date the determination is made. At the hearing before the board  
7 of adjustment, the municipality has the burden of proof to  
8 establish the correctness of its determination.

9 (k) A municipality or a person aggrieved by the final  
10 decision of the board of adjustment under Subsection (j) may seek  
11 judicial review of the decision by filing suit as provided by  
12 Section 211.011 not later than the 20th day after the date the final  
13 decision is made. The court shall review the decision in the manner  
14 provided by Section 211.011 except that:

15 (1) the municipality has the burden of proving by clear  
16 and convincing evidence that its determination was correct; and

17 (2) the court:

18 (A) in reviewing the municipality's decision may  
19 not use a deferential standard in the municipality's favor; and

20 (B) is not limited to determining whether a  
21 decision of the board meets the requirements of this chapter or  
22 other applicable law.

23 (l) A person seeking to continue a nonconforming use under  
24 Subsection (d)(2) who appeals the decision of the municipality or  
25 board of adjustment may continue to use the property in the same  
26 manner pending the appeal unless an official of the body that made  
27 the decision shows cause to stay the nonconforming use by

1 certifying in writing to the board of adjustment or court with  
2 jurisdiction over the appeal facts supporting the official's  
3 opinion that continued nonconforming use of the property would  
4 cause imminent peril to life or property. On a showing of cause the  
5 board of adjustment or court with jurisdiction over the appeal may,  
6 after notice to the official, grant a restraining order to stay  
7 continued nonconforming use of the property.

8 (m) If the board of adjustment or court with jurisdiction  
9 over an appeal determines that an owner or lessee is entitled to:

10 (1) a payment under this section in an amount  
11 different than the amount determined by the municipality under  
12 Subsection (d)(1), the board of adjustment or court shall order, as  
13 applicable:

14 (A) additional payment to the owner or lessee; or  
15 (B) the owner or lessee to reimburse the  
16 municipality; or

17 (2) an amount of time to operate the nonconforming use  
18 that is different than the amount of time initially received under  
19 Subsection (d)(2), the board of adjustment or court shall order the  
20 municipality to allow an owner or lessee to continue the  
21 nonconforming use for additional or less time.

22 (n) An owner or lessee may waive the rights and remedies  
23 provided by this section by providing to the municipality a written  
24 waiver.

25 (o) This section does not apply to a nonconforming use that  
26 has been intentionally abandoned for at least six months.

27 (p) A municipality's immunity from suit and governmental

1 immunity from liability are waived for purposes of an action  
2 brought by a property owner or lessee to enforce the rights and  
3 remedies under this section.

4 SECTION 3. (a) Section 211.006, Local Government Code, as  
5 amended by this Act, and Section 211.019, Local Government Code, as  
6 added by this Act, apply to a property for which:

7 (1) on or after June 1, 2023, the governing body or  
8 zoning commission of a municipality considers a proposed adoption  
9 of or change to a zoning regulation or boundary under which a  
10 current conforming use of the property is a nonconforming use; or

11 (2) on or after February 1, 2023, the governing body or  
12 a board, commission, department, or official of a municipality  
13 requires, by ordinance or otherwise, or receives an application or  
14 request to require a person to stop nonconforming use of the  
15 property due to its nonconformity with the property's current  
16 zoning.

17 (b) Subsection (a)(2) of this section applies to a property  
18 regardless of whether the governing body or a board, commission,  
19 department, or official of the municipality is required by  
20 applicable law to make a determination that the nonconforming use  
21 has an adverse effect or other determination before the  
22 nonconforming use is required to stop.

23 SECTION 4. This Act takes effect immediately if it receives  
24 a vote of two-thirds of all the members elected to each house, as  
25 provided by Section 39, Article III, Texas Constitution. If this  
26 Act does not receive the vote necessary for immediate effect, this  
27 Act takes effect September 1, 2023.

S.B. No. 929

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President of the Senate

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Speaker of the House

I hereby certify that S.B. No. 929 passed the Senate on April 20, 2023, by the following vote: Yeas 30, Nays 1.

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Secretary of the Senate

I hereby certify that S.B. No. 929 passed the House on May 4, 2023, by the following vote: Yeas 136, Nays 8, one present not voting.

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Chief Clerk of the House

Approved:

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Date

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Governor

Exhibit C

H.B. No. 2439

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

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

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

8 SUBTITLE Z. MISCELLANEOUS PROVISIONS PROHIBITING CERTAIN

9 GOVERNMENTAL ACTIONS

10 CHAPTER 3000. GOVERNMENTAL ACTION AFFECTING RESIDENTIAL AND

11 COMMERCIAL CONSTRUCTION

12 Sec. 3000.001. DEFINITIONS. In this chapter:

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

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

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

23 (1) prohibits or limits, directly or indirectly, the  
24 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.

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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