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Legal Q&A

By Scott Houston, TML Director of Legal Services

What is the current state of uniform building codes for Texas cities?

Prior to 2001, Texas had no statewide standards for any residential or commercial buildings constructed within a city. Each city chose what, if any, building code(s) to adopt for construction in the city limits, and each city amended its code to meet local concerns. The most common codes were the Uniform Building Codes and the Southern Standard Building Code. Following is a brief synopsis of the evolution of uniform building codes in Texas:

- In 2001, at the behest of homebuilders, the Texas Legislature adopted S.B. 365, now codified at § 214.211 et seq. of the Texas Local Government Code. S.B. 365 adopted the International Residential Code (IRC) and the National Electrical Code (NEC) as the standard building codes for residential construction in Texas cities starting January 1, 2002. Under the statute, cities are authorized to make amendments to these codes to meet local concerns. *See also* Op. Tex. Att’y Gen. No. GA-0297 (2005).
- In 2001, the legislature also adopted S.B. 5, which is now codified at § 388.003 of the Texas Health and Safety Code. S.B. 5 adopted the Energy Efficiency Chapter of the IRC for single-family residential construction and the International Energy Conservation Code (IECC) for all other residential, commercial, and industrial construction. The bill became effective on September 1, 2001, and cities were required to establish procedures for the administration and enforcement of the codes by September 1, 2001. Under this law as well, cities are authorized to make amendments to the codes to meet local concerns.
- In 2003, S.B. 283 was passed, which requires any city that adopts a building code other than the IRC, to adopt and enforce either prescriptive provisions for the rehabilitation of buildings or the rehabilitation code that accompanies the city’s building code. The bill is codified at § 214.215 et seq. of the Texas Local Government Code.
- In 2003, H.B. 730 was passed to create the Texas Residential Construction Commission. The purpose of the bill is to create standards for home buyer complaints against builders. The bill uses the IRC as the standard for those complaints. However, the bill does not affect city authority in any way or impose any additional requirements on cities.
- In 2005, S.B. 1458 was passed. It provides that (1) the International Building Code (IBC) is adopted as the municipal building code in Texas for commercial and multi-family construction; (2) a city that has adopted a more stringent commercial building code before January 1, 2006, is not required to repeal that code and may adopt future editions of that code; and (3) the National Electrical Code applies to all commercial buildings in a city for which construction begins on or after January 1, 2006, and to any alteration, remodeling, enlargement, or repair of those commercial buildings. Again, nothing in the bill prohibits a city from adopting local amendments to the International Building Code.

Currently, cities that choose to adopt and enforce building codes should be operating under: (1) the IRC and NEC for residential construction; (2) the IECC and IBC for all construction other than single-family residential; and (3) if the city adopts a building code other than the IRC, either prescriptive provisions for the rehabilitation of buildings or the rehabilitation code that accompanies the city's building code.

Is a city required to take steps to administer and enforce building codes?

No. Many cities either choose not to enforce building codes and/or do not have the resources to do so. Thus, TML has advised its member cities that: (1) no action is required on their part; or (2) they may adopt the codes, but delete provisions that require the city to issue a permit or perform an inspection. This arrangement complies with the requirements of state law and places the burden of compliance on the builder. Practically speaking, this is the only option for many cities. Whether the reasons are economic, safety-related, or climate-specific, Texas cities arguably have the right to decide how, when, and if to enforce building codes.

What is the relationship of the Texas Residential Construction Commission and cities?

In 2003, H.B. 730 was passed, which enacted the Texas Residential Construction Commission Act (Act). The Act (Title 16 of the Texas Property Code) creates a dispute resolution process for homebuyer complaints against builders. The bill uses the IRC as the standard for those complaints. Section 430.001(d) of the Property Code expressly provides that the version of the IRC that applies for purposes of the limited statutory warranties and building and performance standards for residential construction in a city or its extraterritorial jurisdiction is “the version of the International Residential Code applicable to...residential construction in the municipality under Section 214.212, Local Government Code.” Nothing in the Act affects the police-power authority of a city to choose how to enforce the IRC or to amend the IRC as it sees fit. The Act was enacted solely to provide a process by which homeowners and builders can resolve complaints out of court. Cities are not required to confirm that a builder is registered, nor do they have any stake in that process. Put simply, the Act does not grant the Texas Residential Construction Commission any authority over cities whatsoever, does not affect city authority in any way, nor does it impose any additional requirements on cities.

If a city does enforce building codes and issues building permits, are there any statutory limitations on that process?

Yes. In the past, cities have always had broad local control to administer building codes and to decide when, if, and how a building permit will be issued. H.B. 2049, introduced in 2003, would have required a city to grant or deny a building permit within certain time periods, or provide written notice to a building permit applicant stating the reasons that the city was unable to act on a building permit within that time period. Under the bill, if the city failed to act in a timely manner, the permit application would be considered granted. Because of the myriad of issues affecting each individual city and building project, TML opposed the bill, and city official opposition helped to kill it.

However, the issue was back in 2005. H.B. 265, which became law, is essentially identical to the previous session's bill. The bill requires a city to either grant, deny, or provide written notice to an applicant stating the reasons that the city has been unable to act on a building permit within 45 days after an application is submitted. A city that chooses to provide the written notice must either: (1) grant or deny the permit not later than the 30th day after the date the notice is received; or (2) not collect or refund any fees associated with the permit. While the League was opposed to this legislation, an informal survey of building officials revealed that most cities issue permits well within the time frame provided by the bill.