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### **What is the current state of 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.

In 2001, the Texas legislature began enacting a series of laws to adopt the International family of codes for the state. Currently, cities that choose to adopt and enforce building codes should normally be operating under: (1) the International Residential Code (IRC) for residential construction; (2) the National Electrical Code (NEC) for electrical construction in both residential and commercial construction; and (3) the International Energy Conservation Code (IECC) and the International Building Code (IBC) for all construction other than single-family residential. Regarding plumbing codes, a city may be operating under the plumbing provisions of the IRC and/or either the plumbing provisions of the Uniform Plumbing Code (UPC) or International Plumbing Code (IPC).

### **What did the evolution of the International Code Council model code adoptions look like?**

The following is a brief synopsis of the evolution of the International 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 IRC and the NEC as the standard building codes for residential construction in Texas cities starting January 1, 2002. House Bill 738 (2021) updates the code to the 2012 edition, effective January 1, 2022. Under the statute, cities are authorized to make any amendments “that may add, modify, or remove requirements set by the code” to meet local concerns, regardless of whether the amendments are “less stringent” than the original code provisions. *See* Op. Tex. Att’y Gen. No. GA-0297 (2005). The new bill also added a public hearing requirement to any IRC amendment.
- 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 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 that date. Under this law as well, cities are authorized to make amendments to the codes to meet local concerns. Regarding the energy codes, however, local amendments may not result in less stringent energy efficiency requirements in nonattainment areas and in affected counties than the energy efficiency

chapter of the IRC or IECC. However, legislation in 2015 authorized an “alternate compliance path for residential construction (see below). A “nonattainment” area is one that has failed to meet federal standards for ambient air quality. The major metropolitan areas of the state are all in nonattainment status. An “affected county” is one listed in state law that is typically surrounding a nonattainment area. *See* Tex. Health and Safety Code § 386.001.

- In 2001, the legislature adopted H.B. 217, which is now codified at § 1301.255 of the Texas Occupations Code (the plumbing license law). The section requires the Texas Board of Plumbing Examiners to adopt the UPC and the IPC. Currently, the board has adopted the 2012 editions of those codes. 22 T.A.C. § 367.2(a). Section 1301.255(d) provides that a city may amend any provisions of a plumbing code to conform to local concerns that do not substantially vary from board rules or other rules of this state. (Note that plumbing installed under a plumbing code must be inspected by a licensed plumbing inspector who is paid directly by the city. Tex. Occ. Code § 1301.255(e).)

The attorney general, in 2002, opined on the relationship between S.B. 365 (adopting the International Residential Code, which contains plumbing provisions) and H.B. 217 (adopting separate plumbing codes). The attorney general concluded that the two bills could be harmonized and opined that “the International Residential Code is the uniform residential building code for municipalities in this state, and its plumbing provisions are the uniform plumbing code for residential construction,” and that cities may choose either the UPC or the IPC to govern nonresidential plumbing. Op. Tex. Att’y Gen. No. JC-0453 (2002).

- In 2003, S.B. 283 was passed and 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. This bill was an anomaly related to one city and shouldn’t be applicable to most cities. The bill is codified at § 214.215 et seq. of the Texas Local Government Code.
- In 2003, H.B. 730 was passed and created the Texas Residential Construction Commission. The purpose of the bill was to create standards for home buyer complaints against builders. The bill used the IRC as the standard for those complaints. However, the bill did not affect city authority or impose any additional requirements on cities. (In 2009, the commission was abolished, and H.B. 2833 granted 253 counties limited enforcement authority relating to building codes.)
- In 2005, S.B. 1458 was passed and provides that the IBC is adopted as the municipal building code in Texas for commercial and multi-family construction. House Bill 738 (2021) updates the code to the 2012 edition, effective January 1, 2022. Also, 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 IBC “that may add, modify, or remove requirements set by the code” or NEC. The new bill also added a public hearing requirement to any IBC amendment.

- In 2007, H.B. 3693 authorized the State Energy Conservation Office (SECO) to – by administrative rule – adopt and substitute the energy efficiency provisions of the latest published editions of the IRC or the IECC for residential or commercial energy efficiency and air quality for the previously-adopted 2001 version. SECO did so, and the 2015 energy code provisions are now adopted by SECO rule. 34 T.A.C. § 19.53.
- In 2011, H.B. 51 made minor modifications to the Health and Safety Code provisions relating to SECO energy code authority by providing that the Energy Systems Laboratory at Texas A&M University may provide technical assistance to cities, including those relating to local amendments. Tex. Health and Safety Code § 388.007.
- In 2014, pursuant to Texas Occupations Code Section 1305.101(a), the Texas Department of Licensing and Regulation adopted the 2017 version of the NEC. Cities are still authorized to make amendments to the NEC, so long as the amendments achieve similar objectives and safety.
- In 2015, H.B. 1736 made various changes related to energy efficiency standards. It provides that: (1) on September 1, 2016, the energy efficiency chapter of the International Residential Code, as it existed on May 1, 2015, is adopted as the energy code in this state for single-family residential construction; (2) on or after September 1, 2021, the State Energy Conservation Office (SECO) may adopt and substitute for that energy code the latest published edition of the energy efficiency chapter of the International Residential Code (IRC), based on written findings on the stringency of the chapter submitted by the Texas A&M Energy Systems Laboratory; (3) SECO may not adopt an edition of the code more often than once every six years and by rule shall establish an effective date for an adopted edition that is not earlier than nine months after the date of adoption; and (4) SECO may adopt and substitute for the International Energy Conservation Code (IECC), which applies to all other residential, commercial, and industrial construction, the latest published edition of the IECC, based on written findings on the stringency of the edition submitted by the laboratory, and SECO by rule shall establish an effective date for an adopted edition that is not earlier than nine months after the date of adoption.

In addition, the bill added an “Energy Rating Index Compliance Alternative” or “subsequent alternative compliance path” to measure compliance for single-family residential construction. The bill was brought forth by homebuilders who felt the energy efficiency standards in the code were too costly. The optional compliance paths expire September 1, 2025, and a city located in a nonattainment area or in an affected county may establish procedures to adopt local amendments to them.

- In 2019, H.B. 2858 was passed and provides that: (1) to protect the public health, safety, and welfare, the International Swimming Pool and Spa Code, as it existed on May 1, 2019, is adopted as the municipal swimming pool and spa code in this state; (2) the

International Swimming Pool and Spa Code applies to all construction, alteration, remodeling, enlargement, and repair of swimming pools and spas in a city that elects to regulate pools or spas, including by requiring fencing under current state law; (3) a city may establish procedures for the adoption of local amendments to the International Swimming Pool and Spa Code and the administration and enforcement of the International Swimming Pool and Spa Code; and (4) a city may review and adopt amendments made by the International Code Council to the International Swimming Pool and Spa Code after May 1, 2019.

- In 2021, the legislature enacted H.B. 738. The bill: (1) provides that the 2012 version of the International Residential Code is the residential building code in this state, and the 2012 version of the International Building Code is the commercial building code in this state; (2) authorizes a city to establish procedures to adopt local amendments “that may add, modify, or remove requirements” set by the codes in (1), above, but only if the city: (a) holds a public hearing on the local amendment before adopting the amendment; and (b) adopts the local amendment by ordinance; (3) recodifies the provisions that prohibit a city from enacting an ordinance, bylaw, order, building code, or rule requiring the installation of a multipurpose residential fire protection sprinkler system or any other fire sprinkler protection system in a new or existing one- or two-family dwelling; and (4) excepts from the prohibition in (3), above, a city that has enacted an ordinance, bylaw, order, building code, or rule requiring the installation of a multipurpose residential fire protection sprinkler system or any other fire protection sprinkler system in a new or existing one- or two-family dwelling on or before January 1, 2009. (Effective January 1, 2022, except that a requirement that a city establish rules and take other necessary action to implement (1) and (2) before January 1, 2022, is effective September 1, 2021.)

What does all of the above mean in plain English? It means that, currently, cities that choose to adopt and enforce building codes should be operating under: (1) the IRC (and possible alternative energy compliance paths) and NEC for residential construction (a city could adopt a plumbing code for residential construction, but most rely on the plumbing provisions of the IRC instead); (2) the NEC, IECC, IBC, and a Texas Board of Plumbers adopted plumbing code 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?**

Maybe. While the enforcement of building codes is a core function for many cities, others choose not to enforce building codes and/or do not have the resources to do so.

Whether to do so is likely better defined as a policy issue instead of a legal one. Thus, TML has advised its member cities lacking the resources to enforce building codes that: (1) no action is required on their part; or (2) they may adopt the codes, but may usually delete provisions that require the city to issue a permit or perform an inspection. This arrangement appears to comply with the requirements of state law, and places the burden of compliance on the builder.

Plumbing inspection might be one exception to the above. A city with a population of more than 5,000 must adopt a plumbing code. Tex. Occ. Code § 1301.551(a). A city of less than 5,000 may, but is not required to, do so. Tex. Occ. Code § 1301.551(b). Any city that has adopted a plumbing code is *required* to employ or contract with a plumbing inspector and *to inspect plumbing installed in the city*. Tex. Occ. Code § 1301.255(e).

In other words, adoption of a plumbing code requires a city to hire or contract with a plumbing inspector and enforce the code. *See* Tex. Occ. Code § 1301.255(e). However, the attorney general has stated that “not every political subdivision in the state is required by the plumbing licensing law to adopt a plumbing code,” and “[c]ities of fewer than 5,000 inhabitants may, but are not required, to adopt a plumbing code pursuant to the plumbing licensing law.” Op. Tex. Att’y Gen. No. JC-0453 (2002).

In spite of the plumbing license law, not inspecting may be the only option for many cities. This means that some smaller cities may choose not to adopt a plumbing code, which imposes a statutory inspection requirement. 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.

### **Must a city adopt a building code by ordinance to enforce it?**

Yes. While state law generally “adopts” for the state certain codes, and some state agencies have the power to adopt certain codes, a city arguably can’t enforce those codes without an ordinance in place.

In 2001, the Texas Legislature adopted S.B. 365, now codified as Sections 214.211 - 214.214 of the Texas Local Government Code. S.B. 365 adopted the IRC as a municipal building code for residential construction in Texas cities starting January 1, 2002. The language of Section 214.212(a) now provides that:

[t]o protect the public health, safety, and welfare, the International Residential Code, as it existed on May 1, 2012, is adopted as *a* municipal residential building code in this state.

(Emphasis added.) More importantly, Subsection (b) provides that a “the International Residential Code applies to all construction, alteration, remodeling, enlargement, and repair of residential structures in a municipality.”

Also in 2001, the legislature adopted H.B. 217, now codified in chapter 1301 of the Texas Occupations Code. Section 1301.551 provides that:

(a) A municipality with more than 5,000 inhabitants *shall* regulate by ordinance or bylaw the material, construction, alteration, and inspection of any pipe, faucet, tank, valve, water heater, or other fixture by or through which a supply of water, gas, or sewage is used or carried.

(b) Any other municipality *may* regulate by ordinance or bylaw the matters described by Subsection (a).

(Emphasis added.) The language above is one of the few clear mandates related to cities and building code enforcement.

In 2006, the legislature adopted S.B. 1458, now generally codified as Section 214.216 of the Local Government Code. S.B. 1458 adopted the IBC as a municipal building code for commercial construction in Texas cities starting on January 1, 2006. The language of Section 214.216(a) now provides that

[t]o protect the public health, safety, and welfare, the International Building Code, as it existed on May 1, 2012, is adopted as *a* municipal commercial building code in this state.

(Emphasis added.) Similar to the IRC provision, Subsection (b) provides that a “International Building Code applies to all commercial buildings in a municipality for which construction begins on or after January 1, 2006, and to any alteration, remodeling, enlargement, or repair of those commercial buildings.” House Bill 738 (2021) updates the code to the 2012 edition, effective January 1, 2022.

The language of Chapter 214 makes clear that the International Residential and Building Codes are “a” municipal building code in Texas. With regard to the energy conservation codes, the SECO rules in 34 T.A.C. 19.53 contain similar language:

(a) Single-family residential construction. Effective September 1, 2016, the energy efficiency chapter of the International Residential Code, as it existed on May 1, 2015, and as supplemented by Health and Safety Code, §388.003(i) and (j), *is adopted as the energy code in this state* for single-family residential construction as it is defined in Health and Safety Code, §388.002(12).

(b) All other residential, commercial, and industrial construction. Effective November 1, 2016, the International Energy Conservation Code, as it existed on May 1, 2015, *is adopted as the energy code for use in this state* for all residential, commercial, and industrial construction that is not single-family residential construction under subsection (a) of this section.

(Emphasis added.) The language is somewhat ambiguous, but most would agree that the cited international codes are “the” codes for Texas.

Note that this language is different from the county building code provisions in Local Government Code Section 233.153(a). That provision provides that “[n]ew residential construction of a single-family house or duplex in the unincorporated area of a county to which this subchapter applies *shall conform to* the version of the International Residential Code published as of May 1, 2008, or the version of the International Residential Code that is applicable in the county seat of that county.” (Emphasis added.)

Based on all of the above, the best reading of Local Government Code Chapter 214 and Health and Safety Code Chapter 388 is that any structure built within a city *must comply with the requirements of the International Codes*. (So, for example, a city ordinance providing that no code exists in the city limits would arguably have no effect.)

But the above may be a purely academic analysis. The real issue is not whether the codes apply, but rather *how violations are enforced*. Some cities either choose not to enforce building codes and/or do not have the resources to do so. Practically speaking, this is the only option for many cities.

On the other hand, many cities have an ordinance that formally adopts the codes, with or without local amendments. Those cities do so to avail themselves of: (1) the ability to issue and enforce notices of violation for a violation of a code provision; and (2) to determine which provisions of the code may need modification to fit the city's needs.

The conclusion that a city must adopt a building code by ordinance to enforce it is bolstered by SECO's website, which provides that "[l]ocal jurisdictions are responsible for building energy code implementation and enforcement.

### **What was the Texas Residential Construction Commission, what happened to it, and what was its relationship to cities?**

In 2003, the legislature enacted H.B. 730, the Texas Residential Construction Commission Act (Act). The Act, which was in Title 16 of the Texas Property Code until it was later repealed, created a dispute resolution process for homebuyer complaints against builders. The Act used the IRC as the standard for those complaints. Section 430.001(d) of the Property Code expressly provided that the version of the IRC that applied for purposes of the limited statutory warranties and building and performance standards for residential construction in a city or its extraterritorial jurisdiction was "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 affected the police-power authority of a city to choose how to enforce the IRC or to amend the IRC as it saw fit. The Act was enacted solely to provide a process by which homeowners and builders could resolve complaints out of court. Except for the now-repealed requirement in Local Government Code Section 214.906 that that a city had to verify a homebuilder's TRCC registration prior to issuing a building permit, the Act did not grant the Texas Residential Construction Commission any authority over cities.

The TRCC was abolished in 2009 because legislation to continue it failed to pass.

### **Since the dissolution of the Texas Residential Construction Commission, what has taken its place?**

When the TRCC was abolished in 2009, H.B. 2833 was enacted as a compromise related to that process. H.B. 2833 enacted Subchapter F of Local Government Code Chapter 233 and authorizes any county (except Loving County) to adopt the International Residential Code to apply to construction in the unincorporated area of the county.

The bill protects municipal authority in the extraterritorial jurisdiction (ETJ) by providing that, if a city has adopted a building code in its ETJ, the building code adopted by the city controls. That's odd because the Texas Supreme Courts subsequently concluded that a city may not generally enforce its building codes in the ETJ. *Collin Cty. v. City of McKinney*, 553 S.W.3d 79 (Tex. App. 2018), *reh'g denied* (June 8, 2018); *Town of Lakewood Vill. v. Bizios*, 493 S.W.3d 527 (Tex. 2016).

The statute gives counties little in the way of enforcement authority, but it does provide that “[n]ew residential construction of a single-family house or duplex in the unincorporated area of a county to which this subchapter applies *shall conform to* the version of the International Residential Code published as of May 1, 2008, or the version of the International Residential Code that is applicable in the county seat of that county.”

Similarly, the plumbing license law provides that most plumbing installed outside of a city by a licensed plumber must be installed according to one of the plumbing codes adopted by the Texas Board of Plumbing Examiners. Tex. Occ. Code § 1301.255(c).

### **Has the legislature imposed additional requirements on cities that enforce building codes and issues building permits?**

Yes. Three examples include: (1) asbestos abatement; (2) architectural barriers; and (3) plumber and electrician limitations.

#### **Asbestos Abatement**

State law requires a city to obtain evidence that a person has performed an asbestos survey prior to issuing a permit for renovation or demolition of a public or commercial building. The Texas Asbestos Health Protection Act (TAHPA) provides (in Texas Occupations Code Section 1954.259(b)) that:

(b) A municipality that requires a person to obtain a permit before renovating or demolishing a public or commercial building may not issue the permit unless the applicant provides:

(1) evidence acceptable to the municipality that an asbestos survey, as required by this chapter, of all parts of the building affected by the planned renovation or demolition has been completed by a person licensed under this chapter to perform a survey; or

(2) a certification from a licensed engineer or registered architect, stating that:

(A) the engineer or architect has reviewed the material safety data sheets for the materials used in the original construction, the subsequent renovations or

alterations of all parts of the building affected by the planned renovation or demolition, and any asbestos surveys of the building previously conducted in accordance with this chapter; and

(B) in the engineer's or architect's professional opinion, all parts of the building affected by the planned renovation or demolition do not contain asbestos.

The Texas Department of State Health Services (DSHS) requested an attorney general opinion (RQ-0775-GA) as to whether it may pursue enforcement action under the TAHPA (which could include a civil penalty) against a city that fails to verify that the survey was performed. TML and the Building Officials Association of Texas filed comments on the request, and asked DSHS to withdraw it. DSHS declined to do so, but offered its assistance in educating city officials on the issue. For more information please contact DSHS at [www.dshs.state.tx.us/asbestos](http://www.dshs.state.tx.us/asbestos).

The attorney general later released Op. Tex. Att’y Gen. No GA-0729 (2009). The opinion concluded that there is no “clear and unambiguous waiver of immunity from suit for a violation of” the TAHPA. Thus, successful enforcement against a city by the DSHS is unlikely, although it has been attempted since.

### **Architectural Barriers**

The Texas Architectural Barriers Act (TABAA) is a state law that is intended to encourage and promote the rehabilitation of persons with disabilities and eliminate unnecessary barriers encountered by persons with disabilities. It came on the heels of a similar federal law, the Architectural Barriers Act of 1968.

TABAA is complex, and includes many administrative provisions. Essentially, certain projects that will be used by those with disabilities (e.g., most public facilities and many commercial facilities) must provide plans to be approved by the Texas Department of Licensing and Regulation (TDLR). (TDLR outsources plan review to private companies.)

TABAA provides that “[a] public official of a political subdivision who is legally authorized to issue building construction permits may not accept an application for a building construction permit for a building or facility subject...[TABAA]...unless the official verifies that the building or facility has been registered with the department as provided by rule.” Tex. Gov’t Code 469.102(d). However, current administrative rules appear to place the burden on the person responsible for the building – typically the owner or architect/engineer – to submit plans for approval to TDLR. 16 T.A.C. 68.50.

### **Plumber and Electrician Limitations**

The plumbing license law provides that, in a city that has adopted a plumbing code, a person must obtain a permit before the person performs plumbing. Tex. Occ. Code § 1301.551(c)(the repairing of leaks, the replacement of lavatory or kitchen faucets, the replacement of ballcocks or water control valves, the replacement of garbage disposals, or the replacement of water closets are excepted from the permit requirement).

The law also mandates – among other things – that cities accept permit applications by telephone, fax, or email, and provides that a city that requires a permit may not charge a plumber a registration fee. Tex. Occ. Code § 1301.551(g). Finally, a city that requires a plumber to obtain a permit must verify through the Texas Board of Plumbing Examiners’ website, or by contacting the board by telephone, that the plumber has on file with the board a certificate of insurance. Tex. Occ. Code § 1301.552.

As for electricians, state law provides that: (1) a city or region may not collect a permit fee, registration fee, administrative fee, or any other fee from an electrician who holds a license issued by the state for work performed in the city or region; but (2) the law does not prohibit a city or region from collecting a building permit fee. Tex. Occ. Code § 1305.201(f).

### **How does the Texas Engineering Practices Act affect the building permit process?**

Several years ago, the Texas Board of Professional Engineers (TBPE) sought enforcement action against at least one Texas city. A city employee issued a building permit to an applicant for plans that required the seal of a licensed engineer. The plans were sealed by a licensed architect, but not by an engineer. Apparently, the building shown in the plans developed defects that were attributable to poor engineering. Subsequent to the appearance of the defects, the TBPE informed the city that it had violated the Engineering Practices Act by accepting the plans and issuing the permit. An agreement was ultimately reached on the issue.

Similarly, a 2005 attorney general opinion request asked whether “whether a city building official may rely on a professional engineer’s seal and certification that a plat or plan complies with the city’s building codes.” That opinion resulted in the issuance of attorney general opinion GA-0439 (2006), which failed to provide definitive answers on the question. In any case, city officials should be aware of the statutory provision at issue. Texas Occupations Code Section 1001.402, entitled “Enforcement by Certain Public Officials,” provides that:

A public official of the state or of a political subdivision of the state who is responsible for enforcing laws that affect the practice of engineering may accept a plan, specification, or other related document only if the plan, specification, or other document was prepared by an engineer, as evidenced by the engineer's seal.

The TBPE created the Government Advisory Committee, which includes municipal officials, to provide a forum for various issues related to the practice of engineering for governmental entities.

Nevertheless, the issue arose again in 2009. The TBPE sought to enforce its rules against a city, resulting in a state legislator requesting an attorney general opinion on the issue. That request, RQ-0832-GA, was later withdrawn after the city and the TBPE entered into an agreed order to close the case. Finally, in 2015, TML joined the City of Venus to litigate against the TBPE when it filed an administrative enforcement action against the city. The case was ultimately settled.

**If a city does enforce building codes, and issues building permits, are there any other 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. 265, passed in 2005 and now codified as Local Government Code Section 214.904, 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) either not collect or refund any fees associated with the permit. While the TML 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.

The 2009 session brought a bill that, as filed, would have been detrimental to all cities. The bill, S.B. 820, ultimately became a negotiated compromise that all parties could live with. It applies only to a city with a population of more than 100,000, and it provides that on or before the 21st day before the date the governing body takes action to consider, review, and recommend the adoption of or amendment to a national model code governing the construction, renovation, use, or maintenance of buildings and building systems, the governing body: (1) shall publish notice of the proposed action conspicuously on the city's Internet Web site; (2) shall make a reasonable effort to encourage public comment from persons affected by the proposed adoption or amendment; and (3) on the written request of five or more persons, shall hold a public hearing open to public comment on the proposed adoption or amendment on or before the 14th day before the date the governing body adopts the ordinance. The bill also provides that if the governing body has established an advisory board or substantially similar entity for the purpose of obtaining public comment on the proposed adoption of or amendment to a national model code, the requirements described above do not apply. In addition, the bill provides that the governing body of a city with a population of more than 100,000 that adopts an ordinance or national model code provision that is intended to govern the construction, renovation, use, or maintenance of buildings and building systems in the city shall delay implementing and enforcing the ordinance for at least 30 days after final adoption, unless a delay in implementing or enforcing the ordinance would cause imminent harm to the health or safety of the public.

S.B. 1410 was a bill that passed in 2009 despite strong municipal opposition. The bill makes various changes to the requirements to obtain a state plumbing license. Of interest to cities, the bill provides, among other things, that: (1) notwithstanding any other provision of state law, after January 1, 2009, a city may not require the installation of a fire sprinkler system in a new or existing one- or two-family dwelling; (2) a city may allow a multipurpose residential fire protection sprinkler specialist or other contractor to offer, for a fee, the installation of a fire sprinkler protection system in a new one- or two-family dwelling; and (3) a multipurpose residential fire protection sprinkler specialist may install a sprinkler system in a new or existing one- or two-family dwelling.

In 2011, H.B. 1168 was the only-building permit-related bill that passed. The bill modifies the law relating to a landlord's duty to install smoke alarms in a rental unit. Of particular interest to

cities, the bill provides that, if a dwelling unit was occupied as a residence before September 1, 2011, or a certificate of occupancy was issued for the dwelling unit before that date, a smoke alarm installed in accordance with law may be powered by battery and is not required to be interconnected with other smoke alarms, except that a smoke alarm that is installed to replace a smoke alarm that was in place on the date the dwelling unit was first occupied as a residence must comply with residential building code standards that applied to the dwelling unit on that date.

In 2019, H.B. 852 passed and provides that: (1) in determining the amount of a building permit or inspection fee required in connection with the construction or improvement of a residential dwelling, a city may not consider: (a) the value of the dwelling; or (b) the cost of constructing or improving the dwelling; and (2) a city may not require the disclosure of information related to the value of or cost of constructing or improving a residential dwelling as a condition of obtaining a building permit except as required by the Federal Emergency Management Agency for participation in the National Flood Insurance Program.

H.B. 2439, one of the most detrimental building-related bills cities have seen, also passed in 2019 and provides: (1) that a governmental entity, including a city, may not adopt or enforce a rule, charter provision, ordinance, order, building code, or other regulation that: (a) prohibits or limits, directly or indirectly, the use or installation of a building product or material in the construction, renovation, maintenance, or other alteration of a residential or commercial building if the building product or material is approved for use by a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building; or (b) establishes a standard for a building product, material, or aesthetic method in construction, renovation, maintenance, or other alteration of a residential or commercial building if the standard is more stringent than a standard for the product, material, or aesthetic method under a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building; and (2) for certain narrow exceptions to the prohibitions above. Legislation passed in 2021, S.B. 1090, exempts the following from certain regulations regarding the use of building products, materials, or methods used in the construction or renovation of residential or commercial buildings: (1) a city, to the extent that the city regulates outdoor lighting for the purpose of reducing light pollution, that has adopted a resolution stating the city's intent to become certified as a Dark Sky Community that does not regulate outdoor lighting in a manner that is more restrictive than the prohibitions or limitations required to become certified as a Dark Sky Community; (2) a standard for a plumbing product required by an ordinance or other regulation implementing certain water conservation plans or programs; (3) a standard for a plumbing product imposed by the Texas Water Development Board as a condition for applying for or receiving financial assistance under a program administered by the board; and (4) certain land use restrictions contained in plats and other instruments in certain cities. (Effective September 1, 2021.)

Another bill passed in 2021, H.B. 2205, provides – among other things – that: (1) pool safety standards adopted by rule by the Department of State Health Services must comply with a version of the International Swimming Pool and Spa Code that is not older than the version in effect on May 1, 2019; (2) a person may use, maintain, and repair a pool or spa that was in compliance with the laws of this state on August 31, 2021, and related mechanical, electrical,

and plumbing systems in accordance with the laws applicable to the pool or system on that date; (3) a municipality may adopt a more recent version of the International Swimming Pool and Spa Code than in (1) to apply in the municipality; and (3) to the extent a provision of a code adopted by a municipality under (2) conflicts with a law of this state or a regulation on pool operation and management, water quality, safety standards unrelated to design and construction, signage, or enclosures, the law or regulation controls. (Effective September 1, 2021.)