



**AGENDA ITEM REQUEST FORM  
CITY OF JOHNSON CITY, TEXAS  
CITY COUNCIL**

**ITEM NO. 10**

**MEETING DATE:** January 12, 2021

**AGENDA PLACEMENT:**

- Ceremonial
- Consent
- Individual
- Closed Session

**CAPTION:**

Approval of a Resolution of the City Council of the City of Johnson City, Texas expressing support for House Bill No. 233 being proposed by Representative Andrew Murr during the 87th Legislative Session; authorizing the Chief Administrative Officer / City Secretary to take all necessary steps to implement the provisions of this Resolution; incorporating recitals; providing for severability; and adopting an effective date. (Staff)

**EXECUTIVE SUMMARY:**

The City of Horseshoe Bay distributed a draft resolution of support for House Bill No. 233 exempting municipalities less than 25,000 in population from the restrictions of House Bill No. 2439, adopted during the prior Legislative Session, that restrict a municipality's ability to regulate building materials within its community.

**FINANCIAL:** N/a

**ATTACHMENTS:**

- City of Horseshoe Bay email; and
- Texas Municipal League Legal Question & Answer on H.B. 2439.

**SUGGESTED ACTION:**

Motion to approve a Resolution of the City Council of the City of Johnson City, Texas expressing support for House Bill No. 233 being proposed by Representative Andrew Murr during the 87th Legislative Session; authorizing the Chief Administrative Officer / City Secretary to take all necessary steps to implement the provisions of this Resolution; incorporating recitals; providing for severability; and adopting an effective date.

**PREPARED BY:** City Staff

**DATE SUBMITTED:** 1/10/21

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF JOHNSON CITY, TEXAS (“CITY”) EXPRESSING SUPPORT FOR HOUSE BILL NO. 233 BEING PROPOSED BY REPRESENTATIVE ANDREW MURR DURING THE 87<sup>TH</sup> LEGISLATIVE SESSION; AUTHORIZING THE CHIEF ADMINISTRATIVE OFFICER / CITY SECRETARY TO TAKE ALL NECESSARY STEPS TO IMPLEMENT THE PROVISIONS OF THIS RESOLUTION; INCORPORATING RECITALS; PROVIDING FOR SEVERABILITY; AND ADOPTING AN EFFECTIVE DATE.**

**WHEREAS**, during the 86<sup>th</sup> Texas Legislative Session, House Bill 2439 was passed and added to the Texas Government Code as Chapter 3000. This Chapter generally prohibits cities in Texas from adopting or enforcing regulations regarding certain building products, materials, or methods, as detailed in Exhibit A.

**WHEREAS**, the City Council of the City of Johnson City believes these restrictions on the City's ability to regulate building materials within the City limits is detrimental to residential and commercial development in Johnson City; and

**WHEREAS**, Representative Andrew Murr has introduced House Bill 233 for the 87<sup>th</sup> Legislative Session which will amend Government Code Chapter 3000, Section 1, as detailed in Exhibit B, to exempt municipalities with a population of less than 25,000 from Chapter 3000 of the Government Code; and

**WHEREAS**, the City Council of the City of Johnson City would like to formally express support for the proposed House Bill 233.

**NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Johnson City, Texas that:**

Section One. The City Council hereby expresses support for House Bill 233 proposed by Texas State Representative Andrew Murr during the 87<sup>th</sup> Legislative Session to amend Texas Government Code Chapter 3000, Section 1 (adopted as House Bill 2439 during the 86<sup>th</sup> Legislative Session).

Section Two. Authorization. The City Council of the City of Johnson City authorizes the Chief Administrative Officer / City Secretary to take all necessary steps to implement the provisions of this Resolution.

Section Three. Findings. The City Council finds all of the above recitals to be true and correct and incorporates the same in this Resolution as findings of fact.

Section Four. Severability. If any section, subsection, sentence, clause, or phrase of this Resolution is for any reason held to be unconstitutional or illegal, such decision shall not affect the validity of the remaining sections of this Resolution. The City Council hereby declares that it would have passed this Resolution, and each section, subsection, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared void.

Section Five. Effective Date. This Resolution shall be effective immediately upon the approval of the City Council.

**PASSED AND APPROVED this 12th day of January 2021.**

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Rhonda Stell, Mayor  
City of Johnson City, Texas

**ATTEST:**

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Rick A. Schroder, Chief Administrative Officer & City Secretary  
City of Johnson City, Texas

## Exhibit A

## GOVERNMENT CODE

## TITLE 10. GENERAL GOVERNMENT

SUBTITLE Z. MISCELLANEOUS PROVISIONS PROHIBITING CERTAIN GOVERNMENTAL  
ACTIONSCHAPTER 3000. GOVERNMENTAL ACTION AFFECTING RESIDENTIAL AND COMMERCIAL  
CONSTRUCTION

Sec. 3000.001. DEFINITIONS. In this chapter:

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

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

Added by Acts 2019, 86th Leg., R.S., Ch. 1289 (H.B. 2439), Sec. 1, eff. September 1, 2019.

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

(1) prohibits or limits, directly or indirectly, the use or installation of a building product or material in the construction, renovation, maintenance, or other alteration of a residential or commercial building if the building product or material is approved for use by a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building; or

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

(b) A governmental entity that adopts a building code governing the construction, renovation, maintenance, or other alteration of a residential

or commercial building may amend a provision of the building code to conform to local concerns if the amendment does not conflict with Subsection (a).

(c) This section does not apply to:

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

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

(3) an ordinance or other regulation that regulates outdoor lighting that is adopted for the purpose of reducing light pollution and that:

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

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

(4) an ordinance or order that:

(A) regulates outdoor lighting; and

(B) is adopted under Subchapter B, Chapter 229, Local Government Code, or Subchapter B, Chapter 240, Local Government Code;

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

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

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

(6) a building located in a place or area designated for its historical, cultural, or architectural importance and significance by a governmental entity, if designated before April 1, 2019;

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

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

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

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

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

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

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

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

Added by Acts 2019, 86th Leg., R.S., Ch. 1289 (H.B. 2439), Sec. 1, eff. September 1, 2019.

Sec. 3000.003. INJUNCTION. (a) The attorney general or an aggrieved party may file an action in district court to enjoin a violation or threatened violation of Section 3000.002.

(b) The court may grant appropriate relief.

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

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

Added by Acts 2019, 86th Leg., R.S., Ch. 1289 (H.B. 2439), Sec. 1, eff. September 1, 2019.

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

Added by Acts 2019, 86th Leg., R.S., Ch. 1289 (H.B. 2439), Sec. 1, eff. September 1, 2019.

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

Added by Acts 2019, 86th Leg., R.S., Ch. 1289 (H.B. 2439), Sec. 1, eff. September 1, 2019.

Exhibit B

By: Murr

H.B. No. 233

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the applicability of the prohibition on governmental  
3 entities adopting certain regulations governing the use of certain  
4 building products, materials, or methods.  
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
6 SECTION 1. Chapter 3000, Government Code, is amended by  
7 adding Section 3000.0015 to read as follows:  
8 Sec. 3000.0015. APPLICABILITY. This chapter does not apply  
9 to a municipality with a population of less than 25,000.  
10 SECTION 2. This Act takes effect immediately if it receives  
11 a vote of two-thirds of all the members elected to each house, as  
12 provided by Section 39, Article III, Texas Constitution. If this  
13 Act does not receive the vote necessary for immediate effect, this  
14 Act takes effect September 1, 2021.



From: kcraig@horseshoe-bay-tx.gov <kcraig@horseshoe-bay-tx.gov>

Sent: Friday, December 4, 2020 9:55 AM

To: Multiple Municipalities

Subject: Resolution about regulating building materials

Good morning,

A few people have asked for this, so I thought I'd just forward it to the group. This is a resolution expressing support for Representative Andrew Murr's House Bill 233 being presented this legislative session that will (if passed) allow cities under 25,000 in population to be exempt from HB 2439 that was passed as Chapter 3000 of the Government Code in the last legislative session. That is the bill everyone was concerned about because it limits the ability of cities to regulate building materials.

Even if your population is greater than 25,000, we are hoping you will still support this legislation because it is one step forward in the effort to get back the ability to regulate some building materials for all cities.

Have a wonderful weekend!

Kerri Craig, MPA, TRMC  
City Secretary/Chief Elections Officer  
Records Management Officer/Public Information Officer  
City of Horseshoe Bay  
1 Community Drive  
Post Office Box 7765  
Horseshoe Bay, Texas 78657-7765  
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"Integrity is doing the right thing, even when no one is watching."— C.S. Lewis

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**H.B. 2439 (2019)**  
**Legal Q&A**  
**Scott Houston**

**1. What is H.B. 2439?**

**H.B. 2439** by Representative Dade Phelan (R – Beaumont) is effective September 1, 2019, and generally provides – with some exceptions – that a governmental entity, including a city, may not adopt or enforce a rule, charter provision, ordinance, order, building code, or other regulation that: (1) prohibits or limits, directly or indirectly, the use or installation of a building product or material in the construction, renovation, maintenance, or other alteration of a residential or commercial building if the building product or material is approved for use by a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building; or (2) establishes a standard for a building product, material, or aesthetic method in construction, renovation, maintenance, or other alteration of a residential or commercial building if the standard is more stringent than a standard for the product, material, or aesthetic method under a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building. *See* TEXAS GOV'T CODE Section 3000.002(a)(1) & (2).

A rule, charter provision, ordinance, order, building code, or other regulation adopted by a city that conflicts with the bill is void. 3000.002(e).

**2. Why was the bill needed?**

According to the Texas House Business and Commerce Committee Report:

There have been concerns raised regarding the elimination of consumer and builder choice in construction through overly restrictive local municipal zoning ordinances, building codes, design guidelines, and architectural standards. Critics argue that these restrictive ordinances, codes, guidelines, and standards create monopolies, increase the cost of construction, and ultimately price thousands of Texans out of the housing market. C.S.H.B. 2439 seeks to address these concerns and eliminate the ability of a governmental entity to enact overly restrictive, vendor-driven building regulations.

In other words, the undertone was that cities were enacting ordinances that required builders to use products available from only one or a few sources to benefit those vendors. Of course, the bill goes much, much further than that. Legislators are already hearing from city officials about the bill's detrimental affects.

**3. What is meant by a city regulation that “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?”**

The best way to understand this core provision of the bill is to break it down into two elements:

- The bill clearly applies only to residential or commercial “buildings.” 3000.002(a)(1). Those terms are not defined, so their normal meaning applies. 311.011. That means it is safe to say that single- and multi-family homes, as well apartments, are subject to the bill’s limitations. Commercial buildings typically include retail and warehouses, but not industrial or more intense uses. A city can define the terms by ordinance, but shouldn’t be unreasonable. In other words, it doesn’t make sense to classify a single-family home as an industrial use.

“Construction, renovation, maintenance, or other alteration” appears to cover just about any type of change to a building.

- A “building product or material [that] 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.” 3000.002(a)(1).

Most agree that the language above references the International Code Council model codes and a handful of others. Currently, cities 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. With regard to 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). Other ICC Codes includes the International Fire Code (IFC), the International Fuel Gas Code (IFGS), the International Property Maintenance Code, and several more.

The ICC code cycles update every three years. The last three code cycles as of 2019 are 2018, 2015, and 2012.

Examples of materials allowed by the 2018 IRC for home exteriors include, among others: (1) concrete, stone, or masonry; (2) fiber cement siding; (3) horizontal aluminum; (4) vinyl siding; or (5) wood siding. *See* Table [R703.3\(1\)](#). A city that has, through an IRC amendment or any other regulation, mandated a percent masonry requirement is thus preempted. A builder can now use vinyl siding or wood siding if he or she chooses because those are a “building product or material [that] 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.”

The bills prohibitions aren’t limited to aesthetic building products or materials. Any city that has amended any ICC or other code should review those amendments with their building official and legal counsel to determine if an amendment runs afoul of the bill’s prohibitions.

**4. What is meant by a city regulation that “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?”**

Most agree that any city regulation requiring that a building look a certain way (i.e., above-and-beyond an appearance that comes about through compliance with minimum national model code standards) is prohibited. 3000.002(a)(2). Some have argued that architectural features, front elevation requirements, roof pitch, window size, and similar requirements may be preempted. Of course, those things may or may not be addressed by a base international model code. If they are not, they are not preempted. In any case, each city should consult its attorney on specifics.

**5. Can a city continue to adopt amendments to its building codes?**

Yes, but they can't conflict with the prohibitions in the bill. A city that adopts a building code governing the construction, renovation, maintenance, or other alteration of a residential or commercial building may amend a provision of the building code to conform to local concerns if the amendment does not conflict with the prohibitions discussed in questions 3 and 4, above. 3000.002(b). The prohibition against amendments that conflict with the bill overrides authority in other law to make amendments. *See, e.g.,* TEX. LOC. GOV'T CODE 214.212(c); 214.214(b); 214.216(c).

**6. May a city use private deed restrictions to require certain materials or methods?**

Probably not. State law authorizes the City of Houston and any city that doesn't have zoning to enforce certain private deed restrictions. TEX. LOC. GOV'T CODE Subchapter F. (an authorized city may enforce a deed restriction that “regulates architectural features of a structure”). However, the language in H.B. 2439 arguably preempts such a regulation because it would be “establishing a standard or limiting a product.” Of course, private deed restrictions between property owners are still enforceable.

**7. Does a city have any option at all with regard to controlling building materials or construction methods?**

That's debatable, but the obvious method is by agreement. A city can enter into an agreement wherein a person voluntarily agrees to abide by certain standards. For commercial construction, the incentivizing tool would be a Local Government Code “Chapter 380 agreement.” For residential and commercial, it would be a “neighborhood empowerment zone” under Chapter

378 of the Local Government Code. Property and/or sales tax abatements could be other options.

**8. Are some structures exempt from the prohibitions in the bill?**

Yes. The prohibitions in questions 3 and 4, above, do not apply to:

1. a program established by a state agency that requires particular standards, incentives, or financing arrangements in order to comply with requirements of a state or federal funding source or housing program;
2. a requirement for a building necessary to consider the building eligible for windstorm and hail insurance coverage;
3. an ordinance or other regulation that: (i) regulates outdoor lighting for the purpose of reducing light pollution; and (ii) is adopted by a city that is certified as a Dark Sky Community by the International Dark-Sky Association as part of the International Dark Sky Places Program;
4. an ordinance or order that: (i) regulates outdoor lighting; and (ii) is adopted under the authority of state law; or
5. a building located in a place or area designated for its historical, cultural, or architectural importance and significance that a city may regulate through zoning, if the city: (i) is a certified local government under the National Historic Preservation Act; or (ii) has an applicable landmark ordinance that meets the requirements under the certified local government program as determined by the Texas Historical Commission (a city that doesn't meet (i) or (ii) can adopt or enforce a regulation in questions 3 and 4, above, that applies to a building located in a place or area designated on or after April 1, 2019, by the city for its historical, cultural, or architectural importance and significance, if the city has the voluntary consent from the building owner);
6. a building located in a place or area designated for its historical, cultural, or architectural importance and significance by a city, if designated before April 1, 2019;
7. a building located in an area designated as a historic district on the National Register of Historic Places;
8. a building designated as a Recorded Texas Historic Landmark;
9. a building designated as a State Archeological Landmark or State Antiquities Landmark;
10. a building listed on the National Register of Historic Places or designated as a landmark by a city;
11. a building located in a World Heritage Buffer Zone; or
12. a building located in an area designated for development, restoration, or preservation in a main street city under the main street program.

3000.002(c)(1)-(12); 3000.002(d). In addition, the bill does not affect provisions regarding the installation of a fire sprinkler protection system under Section 1301.551(i), Occupations Code. 3000.004. Section 1301.551(i) provides that:

Notwithstanding any other provision of state law, after January 1, 2009, a municipality may not enact 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. A municipality may adopt an ordinance, bylaw, order, or rule allowing 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.

**9. How are the bill's prohibitions enforced?**

The attorney general or an aggrieved party may file an action in district court to enjoin a violation or threatened violation of the bill. 3000.003. The attorney general may recover reasonable attorney's fees and costs incurred in bringing an action under the bill, and sovereign and governmental immunity to suit is waived and abolished to the extent necessary to enforce the bill. *Id.*