



# CITY OF DECATUR, TEXAS

Development Services ★ 1601 S. State Street ★ Decatur, TX 76234 ★ (940) 393-0250 voice ★ (940) 626-4629 fax

## AGENDA

### Planning and Zoning Commission and City Council Joint Workshop\*

Monday, August 19, 2019, at 5:30 P.M.

City Hall Meeting Room

201 E. Walnut

#### Call to Order

- ITEM 1: DISCUSS WITH STAFF AND GIVE DIRECTION REGARDING PROPOSED EXEMPTIONS TO THE SUBDIVISION REGULATIONS PERTAINING TO PLATTING, PERMITTING AND THE CONSTRUCTION OF PUBLIC IMPROVEMENTS ON SPECIFIC AREAS AND PROPERTIES.**
- ITEM 2: RECEIVE SUMMARY FOLLOW-UP DISCUSSION OF THE ORDINANCES ADDRESSING HOUSE BILL 2439, HOUSE BILL 2497 AND HOUSE BILL 3167 AND 2019 LEGISLATIVE SESSION.**

#### Adjournment

Prepared and posted this the 15<sup>th</sup> day of June, 2018, in accordance with Chapter 551, Texas Government Code.

Dedra Denée Ragland, AICP  
Planning and Development Director

**\*NOTE: THE PLANNING AND ZONING COMMISSION AND CITY COUNCIL RESERVE THE RIGHT TO ADJOURN INTO A CLOSED MEETING AT ANY TIME REGARDING ANY ITEM ON THE AGENDA FOR WHICH IT IS LEGALLY PERMISSIBLE UNDER THE TEXAS OPEN MEETINGS ACT PURSUANT TO LGC 551.071.**



# CITY OF DECATUR, TEXAS

Development Services ★ 1601 S. State Street ★ Decatur, TX 76234 ★ (940) 393-0250 voice ★ (940) 626-4629 fax

## STAFF REPORT

*August 19, 2019 – Joint City Council and Planning and Zoning Commission Workshop*

<b>TO:</b>	<b>Honorable Mayor and City Council Members Planning and Zoning Commission Members</b>	<b>CASE:</b>	<b>SI2019-03</b>
<b>FROM:</b>	<b>Decatur Development Review Committee Legal Counsel</b>	<b>APPLICANT:</b>	<b>City of Decatur</b>
<b>DATE:</b>	<b>August 19, 2019</b>	<b>REQUEST:</b>	<b>Proposed exemptions to the Subdivision Regulations pertaining to building permitting triggering platting and curb/gutter sidewalk construction</b>

### Case Notes:

City Council and Planning and Zoning Commission to discuss and give staff direction regarding proposed exemptions to the Subdivision Regulations as it pertains to platting and the construction of curb/gutter and sidewalks when applications are submitted for a building permit.

Given the recent concerns regarding platting and the construction of curb/gutter and sidewalks triggered by building permitting, the Development Review Committee (DRC) has been working on exemptions to the Subdivision Regulations, particularly as they pertain to permitting triggering platting and the construction of curb/gutter and sidewalks. Fire Marshal Deroy Bennett has spearheaded this effort in coordination with the Planning Director, Public Works Director, Building Official, City Engineer, Chief of Police and our legal counsel.

The DRC has reached general consensus on a list of exemptions to the City's subdivision regulations that should serve as appropriate points for discussion by the City Council and Planning and Zoning Commission.

Policy clarification is requested concerning the following:

1. When a building permit application is made for an old, occupied, already developed parcel, which is unplatted or improperly platted, is requiring platting reasonable, important and does it serve a vital public interest?

2. When the lot identified in #1 is not properly draining, then is requiring curbing and guttering OR some other acceptable solution to the drainage problem reasonable, important and does it serve a vital public interest?
3. Is requiring the property to further incur the additional cost of constructing a sidewalk upon a developed (prior to 2015) and occupied lot reasonable, even if it serves a public interest?
4. Do the proposed exemptions adequately address the items 1 through 3 listed above?
5. What other concerns or comments need to be addressed?

**Recommendation:**

Give staff direction on next steps.

**Attachments:**

1. Proposed exemptions

## Attachment 1 Proposed Exemptions

**Definitions:** Only for the purpose of determining eligibility for an exemption provided by this Section, the following terms shall be defined as follows:

**Brick Ledge:** A feature of a foundation system used to support the brick or masonry veneer wall on a structure.

**Decatur Subdivision Ordinance:** The duly adopted Decatur Subdivision Ordinance, as amended, and may also be referred to herein as the “Subdivision Regulations” or the “Code”.

**External Infrastructure Improvements:** Curbs, gutters, sidewalks, and related infrastructure required by the Decatur Subdivision Ordinance.

**Lot:** A designated parcel, tract, or area of land which is designated as a lot on the Official Map of Decatur adopted September 7, 1898 as recorded in the Wise County Land Records, to be separately owned, used, developed, or built upon.

**Lot of Record:** A Lot which is part of a larger development established by Plat, Subdivision, or otherwise permitted by law (as specified in Chapter 212 of the Texas Local Government Code, as amended), the Plat of which has been recorded in the office of the County Clerk of Wise County, as applicable, or a parcel of land, the deed for which was recorded in the office of the County Clerk prior to March 23, 2015, which was legally existing prior to March 23, 2015, and which has not been subdivided into two (2) or more Lots on or after March 23, 2015.

**Plat:** A map of a subdivision that represents a tract of land, showing the boundaries and location of individual properties, streets, easements and other pertinent information as required by the Subdivision Ordinance and by state law, including without limitation Chapter 212 of the Texas Local Government Code as amended. The term includes but is not limited to a preliminary plat, a final plat, and an amending plat.

**Platting Procedures:** Those methods of processing of an application for Plat approval as set forth in the Subdivision Ordinance and state law, including without limitation Chapter 212 of the Texas Local Government Code as amended.

**Setback Standard(s):** The front yard, rear yard, and/or side yard requirements of the zoning district in which the Lot of Record is located.

**Subdivided or Subdivision:** A division of land that results in the creation of two (2) or more lots, land that is divided into two or more lots, or two or more lots combined to form less than the original number of lots, or a replat of one or existing lots.

**Applicability:**

The exemptions from the provisions of the Subdivision Regulations set forth in this Section shall only apply to both a Lot and a Lot of Record.

**Platting Requirements:**

**Option 1:** All requirements of the Subdivision Regulations, including without limitation the requirement to Plat property in accordance with applicable Platting Procedures if such property was not previously in compliance with such requirements, shall apply to a **Lot of Record** and/or to a Lot when improvement(s) are made to a primary structure located upon such **Lot of Record** and/or Lot and the improvements expand the total square footage of the primary structure and/or alter the external footprint of the primary structure, whether such alteration results in a reduction or expansion of the footprint of the primary structure.

**ALTERNATIVE:**

**Option 2:** All requirements of the Subdivision Regulations, including without limitation the requirement to Plat property in accordance with applicable Platting Procedures if such property was not previously in compliance with such requirements, shall apply to a **Lot** when improvement(s) are made to a primary structure located upon such Lot and the improvements expand the total square footage of the primary structure and/or alter the external footprint of the primary structure, whether such alteration results in a reduction or expansion of the footprint of the primary structure.

**Exemptions from External Infrastructure Improvements and Setback Standards:**

The following activities shall not require the owner of either a Lot or Lot of Record to comply with the External Infrastructure Improvements or the Setback Standards of the Subdivision Ordinance or the Zoning Ordinance:

- A. Improvements that are only internal to the structure and/or that do not expand the total square footage and/or alter the external footprint of the primary structure and/or any accessory structure.
- B. A Subdivision of land required by Court of competent jurisdiction which does not create more than two (2) lots shall not be required to plat or to comply with the External Infrastructure Improvements or Setback Standards.
- C. Construction of an accessory building that does not exceed two hundred (200) square feet, that is portable in nature, and that is **not permanently affixed** to the property by means of placement on a foundation. Only one accessory building per lot as defined for exemption.

- D. A request for a building permit for remodeling or repair of the interior or exterior of the existing square footage of a structure located upon a Lot or Lot of Record when the work to be performed pursuant to that building permit does not expand the total square footage and/or alter the external footprint of the primary structure. The addition of brick ledge or other widening of the exterior wall shall not be considered an expansion or alteration.
- E. Removal or demolition of a structure from such Lot or Lot of Record.
- F. A request for a building permit for a Lot or Lot of Record for remodeling or repair of the interior or exterior of the existing square footage of a structure located upon a Lot or Lot of Record that is adjacent to a state right of way as provided in this subsection. For that portion of the Lot or Lot of Record adjacent to a state right of way, the owner of such Lot or Lot of Record shall comply with development and infrastructure requirements established by the State of Texas and shall apply to the State of Texas for all required permits and approvals.
- G. Cemeteries existing upon the date of adoption of this Section that comply with all applicable State and local laws and regulations (does not apply to new cemeteries).

**Qualification for Exemption – Property Owner Burden:**

It shall be the responsibility of the owner of property seeking to claim an exception pursuant to this Section to provide documentation as requested by the City to establish eligibility for such exemption. Required documentation shall include but shall not be limited to a copy of applicable deed records and of the filed plat evidencing the exemption, and such documents shall be accompanied by a notarized affidavit stating that the documents submitted are true and correct copies of the documents filed in the Wise County Land Records. Dedra: property owner providing a signed affidavit as to property being a Lot or Lot of Record in the absence of any deed records or other documents to prove that property is a Lot or Lot of Record. I am not sure how any of this documentation can be used if property owner is found in violation.

Another option: Forego the curb/gutter and sidewalk requirements for permitting and platting unless it's a new subdivision.



# CITY OF DECATUR, TEXAS

Development Services ★ 1601 S. State Street ★ Decatur, TX 76234 ★ (940) 393-0250 voice ★ (940) 626-4629 fax

## STAFF REPORT

*August 19, 2019 – Joint City Council and Planning and Zoning Commission Workshop*

**TO:** Honorable Mayor and City Council Members    **CASE:** SI2019-01/SI2019-02  
**FROM:** Dedra D. Ragland, AICP, Planning Director    **APPLICANT:** City of Decatur  
**DATE:** August 7, 2019    **REQUEST:** Ordinances to address state laws governing and limiting certain city regulations

### Case Notes:

City Council receive summary follow-up discussion of ordinances amending the Zoning Ordinance, Subdivision Regulations Ordinance, Design Standards Ordinances and/or Building Codes to address House Bill 2439, House Bill 3167 and House Bill 2497 and 2019 Legislative Session.

These bills limit City regulation of development processes, land use, regulation of building standards and materials, permitting and related regulations and become effective September 1, 2019.

As a follow-up, Patricia Adams would like to brief the City Council on these ordinances.

### Recommendation:

No action to be taken.

### Attachments:

1. Draft Ordinance addressing House Bill 2439 and House Bill 2497
2. Draft Ordinance addressing House Bill 3167





Attachment 1  
Ordinance addressing House Bill 2439 and House Bill 2497

**ORDINANCE NUMBER 2019-XX-XX**

**AN ORDINANCE OF THE CITY OF DECATUR, TEXAS, ENACTING AMENDMENTS TO THE CITY’S ZONING ORDINANCE, APPENDIX “B” TO THE CODE OF ORDINANCES OF THE CITY, AND TO THE BUILDING CODE REGULATIONS, CHAPTER 4, “BUILDINGS AND BUILDING REGULATIONS” OF THE CODE OF ORDINANCES; PROVIDING FOR COMPLIANCE WITH NEW STATE LAWS AFFECTING MATERIALS USED IN THE CONSTRUCTION OR RENOVATION OF RESIDENTIAL AND COMMERCIAL BUILDINGS, AND AFFECTING RULES AND PROCEEDINGS BEFORE THE BOARD OF ADJUSTMENT; PROVIDING FOR APPEALS; PROVIDING A CONFLICT/SAVINGS CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION AND SETTING AN EFFECTIVE DATE (SI2019-01).**

**WHEREAS**, the 2019 Legislature enacted HB 2439, prohibiting municipal regulation of materials used for construction and renovation of residential and commercial buildings in certain instances and subject to certain exceptions; and

**WHEREAS**, HB 2439 affects both the enactment of new regulations and the enforcement of existing regulations pertaining to materials for construction or alteration of residential and commercial buildings; and

**WHEREAS**, HB 2439 was signed by the Governor on June 14, 2019 and has an effective date of September 1, 2019; and

**WHEREAS**, the City Council of the City of Decatur finds that City regulations prescribing the types of materials, products or aesthetic methods used for the construction or alteration of residential and commercial buildings are essential for preserving the public health and safety of its citizens and substantially further the economic development and general welfare of the City; and

**WHEREAS**, the exemptions to the provisions of HB 2439 hereinafter provided by this Ordinance are in accordance with the purpose and content of such law; and

**WHEREAS**, there is insufficient time before HB 2439 takes effect to amend specific provisions of the City’s zoning and building regulations that may conflict with the provisions of HB 2439; and

**WHEREAS**, it is the intent of this Ordinance to supersede enforcement of regulations prescribing the types of materials, products or aesthetic methods used for construction or renovation of residential and commercial buildings, in so far as they conflict with HB 2439; and

**WHEREAS**, it is the further intent of this Ordinance to provide procedures for appealing decisions of officials in the enforcement of regulations prescribing the types of materials, products and aesthetic methods used for construction or renovation of residential and commercial buildings; and

**WHEREAS**, it is the further intent of this Ordinance to provide information to citizens of the City that are affected by HB 2439 concerning the prohibitions and limitations on enactment and enforcement of zoning and building regulations prescribing the types of materials, products and aesthetic methods used for construction or renovation of residential and commercial buildings; and

**WHEREAS**, the 2019 Legislature enacted HB 2497, which requires amendments to procedures applicable to the rules of and appellate procedures before the Zoning Board of Adjustment of the City; and

**WHEREAS**, HB 2497 was signed by the Governor on June 10, 2019 and has an effective date of September 1, 2019; and

**WHEREAS**, it is the intent of the City Council to fully comply with the provisions of HB 2439 and HB 2497, while maximizing the public health, safety and general welfare of its citizens; and

**WHEREAS**, it is the further intent of this Ordinance to amend provisions of the City's Zoning Ordinance in order to implement such changes; and

**WHEREAS**, the City has given notice of the amendments to the zoning and building regulations contained in this Ordinance in accordance with all provisions of state law and the City's ordinances; and

**WHEREAS**, a public hearing on the provisions of this Ordinance before the City's Planning and Zoning Commission was conducted on August 6, 2019; and

**WHEREAS**, the City Council has received the report of the Commission recommending approval of this Ordinance; and

**WHEREAS**, a public hearing and first reading on the provisions of this Ordinance before the City Council was conducted on August 12, 2019; and

**WHEREAS**, a second reading on the provisions of this Ordinance was conducted before the City Council on August 26, 2019.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DECATUR, TEXAS:**

**Section 1: Incorporation of Recitals.** The foregoing recitals are findings of the City Council and are hereby adopted and incorporated by reference and made a part of this Ordinance as if fully set forth herein.

**Section 2. Definitions.** The following definitions apply to the provisions of this Article:

(a) “Building Code(s)” means any and all of the codes adopted by the City of Decatur as set forth in Chapter 4, “Buildings and Building Regulations” of the Code of Ordinances of the City, as amended, including local amendments thereto, as currently existing or as later adopted or amended.

(b) “City” means City of Decatur, Texas.

(c) “Commercial Building” means a building for the use or occupation of people for a public purpose or economic gain, or a residence if the building is a multi-family residence that is not defined as a residential building.

(d) “National Model Code” means a publication that is developed, promulgated, and periodically updated at a national level by organizations consisting of industry and government fire and building safety officials through a legislative or consensus process and that is intended for consideration by units of government as local law. “National Model Code” includes the International Residential Code, the National Electrical Code and the International Building Code.

(e) “Official” means an official responsible for enforcement of the City’s Zoning Ordinance or Building Codes, as designated by City Charter, ordinance or other authorization of the City

(f) “Residential Building” means a building having the character of a one-family or two-family dwelling or a multiple single-family dwelling that is not more than three (3) stories high with separate means of egress, including the accessory structures of the dwelling and that does not have the character of a facility used for the accommodation of transient guests or a structure in which medical, rehabilitative, or assisted living services are provided in connection with the occupancy of the structure.

(g) “Zoning Ordinance” means the Zoning Ordinance of the City of Decatur, Texas, codified as Appendix “B” to the Code of Ordinances of the City, as currently existing or as later adopted or amended.

### **Section 3. Prohibitions on Enforcement.**

(a) Notwithstanding any other provision contained in the City's ordinances, regulations or rules to the contrary, an official responsible for enforcement of the City's Zoning Ordinance or Building Codes, as designated by City Charter, ordinance or other authorization of the City, shall not:

(1) prohibit or limit, 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 (3) code cycles that applies to the construction, renovation, maintenance, or other alteration of the building; or

(2) enforce 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) An applicant who proposes to use a building material, product or aesthetic method in the construction or alteration of a residential or commercial building that is prohibited or limited by the City's adopted Zoning Ordinance or building codes, as amended, or that is less stringent than the standard established by such Ordinance or building codes, as amended, shall identify each provision in a National Model Code published within the last three code cycles that approves the use of such building material, product or aesthetic method, as a necessary requirement of the application.

(c) An applicant may agree in writing to employ a building material, product or aesthetic method for use in the construction or alternation of a residential or commercial building that otherwise cannot be enforced under subsection (a).

**Section 4. Exemptions for ordinances, requirements and programs.** The prohibitions in Section 3 above do not apply to the ordinances, requirements or programs of the City or State listed in this Section, and the officials responsible for enforcement of the City's Zoning Ordinance and Building Codes, as designated by City, shall apply all regulations and standards prescribed by such ordinances, requirements or programs listed herein, whether such ordinances, requirements or programs listed herein are currently existing or are hereafter adopted or established by City or State, to the fullest extent therein provided. This Section applies to:

(a) a local amendment of a Building Code to conform to local concerns if the amendment does not conflict with Sections 3(a) or 3(b) of this Article;

(b) 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;

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

(d) an ordinance or other regulation that regulates outdoor lighting that is adopted for the purpose of reducing light pollution and that: (1) 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 (2) applies to outdoor lighting within five miles of the boundary of a military base in which an active training program is conducted;

(e) an ordinance that regulates outdoor lighting and is adopted under Subchapter B, Chapter 229, Texas Local Government Code, as amended, or under Subchapter B, Chapter 240, Texas Local Government Code, as amended; or

(f) installation of a fire sprinkler protection system under Texas Occupation Code, section 1301.551(i), as amended, or under Texas Health and Safety Code, section 775.045(a)(1), as amended.

**Section 5. Exemptions for Buildings.** The prohibitions in Section 3 do not apply to the following buildings, and the officials responsible for enforcement of the City's Zoning Ordinance and Building Codes, as designated by City, shall apply all regulations and standards prescribed by those ordinances or codes to such buildings, where such provisions are currently existing or hereafter adopted or established by City or State, to the fullest extent therein provided. This Section applies to:

(a) a building located in a place or area designated for its historical, cultural, or architectural importance and significance by the City which were adopted by the City Council prior to April 1, 2019:

(b) a building located in a zoning district designated by the City Council after April 1, 2019 for its historical, cultural, or architectural importance and significance by the City, and for which the owner has voluntarily consented in writing to the application of the regulations or standards prohibited by Section 3, including the following zoning districts and any district that may hereafter be created by the City Council for its historical, cultural, or architectural importance and significance;

(c) a building located in a place or area designated for its historical, cultural, or architectural importance and significance the City may regulate under Section 211.003(b), Texas Local Government Code, as amended, if the City (1) is a certified local government under the National Historic Preservation Act (54 U.S.C. Section 300101 et seq.); or (2) has an applicable landmark ordinance that meets the requirements under the certified local government program as determined by the Texas Historical Commission;

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

- (e) a building designated as a Recorded Texas Historic Landmark;
- (f) a building designated as a State Archeological Landmark or State Antiquities Landmark;
- (g) a building listed on the National Register of Historic Places or designated as a landmark by a governmental entity;
- (h) a building located in a World Heritage Buffer Zone; and
- (i) 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, Texas Government Code, as amended.

**Section 6. Appeal.** An applicant, landowner or other aggrieved person (“Appellant”) may appeal the decision of an Official applying a regulation or standard to the construction, renovation, maintenance, or other alteration of a Residential Building or a Commercial Building, when the application of such regulation or standard by the Official is asserted by the Appellant to be prohibited by Section 3, and such appeal shall be asserted as follows:

- (a) If the decision applies a requirement of a Building Code, to the Building Board of Appeals, or if there is no Building Board, to the Zoning Board of Adjustment; or
- (b) if the decision applies a requirement of the Zoning Ordinance, to the Zoning Board of Adjustment.

The appeal shall identify the specific provision or provisions which the Appellant alleges to have been applied in violation of Section 3 of this Article. The appeal shall be filed, processed and decided in the manner provided for other appeals by the body designated by this Section.

**Section 7. Amendments to Board of Adjustment Procedures.** Notwithstanding any other provision contained in the City’s ordinances, regulations or rules to the contrary, the following provisions apply to the adoption of or amendment to rules of the Board of Adjustment (“Board”) and to appellate procedures before the Board.

(a) Rules of the Board of Adjustment adopted or amended on or after September 1, 2019, shall be approved by the City Council prior to becoming effective.

(b) Appeals to the Board of Adjustment from the decision of an administrative official made on or after September 1, 2019, shall be governed by the following rules:

(1) an appeal of a decision by an administrative official that is not related to a specific application, address or project may be made by an aggrieved person or any officer, department, board, or bureau of the City affected by the decision.

(2) an appeal of a decision by an administrative official that is related to a specific application, address or project may be made by any one of the following

- (i) the applicant;
- (ii) the owner or owner’s representative of the property that is the subject of the decision;
- (iii) an aggrieved person who is the owner of property located within two hundred (200) feet of the property that is the subject of the decision; or
- (iv) any officer, department, board, or bureau of the City affected by the decision.

**Section 8. Conflict/Savings Clause.** In the event of a conflict between the provisions of this Ordinance and any other regulation or rule prescribed by charter, another ordinance, resolution or other authorization of the City, the provisions of this ordinance shall control. Notwithstanding the foregoing, all rights and remedies of the City are expressly saved as to any and all complaints, actions, claims, or lawsuits, which have been initiated or have arisen under or pursuant to such conflicting Ordinance, or portion thereof, on the date of adoption of this Ordinance shall continue to be governed by the provisions of that Ordinance and for that purpose the conflicting Ordinance shall remain in full force and effect..

**Section 9. Penalty.** Any person, firm, entity or corporation who violates any provision of this Ordinance or the City's Zoning Ordinance or Building Code(s), as they exist or may be amended, shall be deemed guilty of a misdemeanor, and upon conviction therefore, shall be fined in a sum not exceeding Two Thousand and No/100 Dollars (\$2,000.00). Each continuing day's violation shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude the City from filing suit to enjoin the violation. The City retains all legal rights and remedies available to it pursuant to local, state, and federal law.

**Section 10. Publication and Effective Date.** This Ordinance shall take effect immediately upon its passage and publication as required by law after second reading as prescribed by City Charter. The applicability of an exemption specified by Sections 4 and 5 of this Ordinance that is hereafter adopted or established by ordinance shall take effect on the effective date of such ordinance.

**PRESENTED ON FIRST READING THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.**

**PRESENTED ON SECOND READING AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019 BY A VOTE OF \_\_\_\_\_ AYES, \_\_\_\_\_ NAYS, \_\_\_\_\_ ABSTENTIONS, AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF DECATUR, TEXAS.**

**APPROVED:**

---

Martin B. Woodruff, MAYOR

**ATTEST:**

---

Diane Cockrell, TRMC, CITY SECRETARY

**APPROVED AS TO FORM:**

---

Mason L. Woodruff, CITY ATTORNEY



Attachment 2  
Ordinance addressing House Bill 3167  
**ORDINANCE NUMBER 2019-XX-XX**



**AN ORDINANCE OF THE CITY OF DECATUR, TEXAS, ENACTING AMENDMENTS TO THE DECATUR SUBDIVISION ORDINANCE, APPENDIX "A", "SUBDIVISIONS" OF THE CODE OF ORDINANCES OF THE CITY OF DECATUR, TEXAS; PROVIDING FOR COMPLIANCE WITH NEW STATE LEGISLATION AFFECTING PROCEDURES FOR APPROVING PLATS, REPLATS AND RELATED SITE PLANS; PROVIDING FOR THE INCORPORATION OF PREMISES; PROVIDING A CONFLICT CLAUSE; PROVIDING A SEVERANCE CLAUSE; AND SETTING AN EFFECTIVE DATE**

**WHEREAS**, the 2019 Legislature enacted HB 3167, revising procedures for approval of subdivision plat and related site plans, and HB 3314 procedures for approval of replats; and

**WHEREAS**, HB 3167 and HB 3314 have an effective date of September 1, 2019; and

**WHEREAS**, HB 3167 and HB 3314 contain identical language with respect to procedures for approval of replats; and

**WHEREAS**, it is the intent of the City Council of the City of Decatur, Texas, to fully comply with the provisions of the City's ordinances affected by HB 3167 and HB 3314, while maximizing the public health, safety and general welfare of its citizens; and

**WHEREAS**, HB 3167 did not amend laws affecting procedures for approval of zoning-related plans, plans required for approval of building permits, or procedures for determining the completeness of subdivision applications; and

**WHEREAS**, there is insufficient time before HB 3167 and HB 3314 take effect to amend specific provisions of the City's subdivision regulations that may conflict with the provisions of those laws; and

**WHEREAS**, the City Council finds that it is necessary to change certain procedures in the subdivision ordinance to comply with HB 3167 and HB 3314; and

**WHEREAS**, the City Council further finds that it is necessary to delegate certain responsibilities of the Planning and Zoning Commission under HB 3167 to

administrative officials in order to assure compliance with the timelines in the statute, subject to a right of appeal to the Commission; and

**WHEREAS**, it is the intent of this Ordinance to supersede the procedures for approval of plats, replats and related site plans that conflict with the provisions of HB 3167 and HB 3314; and

**WHEREAS**, the City has given notice of the amendments to the subdivision regulations contained in this Ordinance in accordance with all provisions of state law, City Charter and the City's ordinances; and

**WHEREAS**, a public hearing on this Ordinance before the Planning and Zoning Commission was convened on August 5, 2019, at which testimony was taken, and the hearing was closed on the date of the same; and

**WHEREAS**, a public hearing and first reading on the provisions of this Ordinance before the City Council was conducted on August 12, 2019; and

**WHEREAS**, a second reading on the provisions of this Ordinance was conducted before the City Council on August 26, 2019.

**WHEREAS**, the City Council finds that this Ordinance substantially advances the public health, safety and general welfare of the citizens of Decatur, Texas;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF  
DECATUR, TEXAS:**

**Section 1. Incorporation of Recitals.** The foregoing recitals hereby are incorporated by reference and made a part hereof as if fully set forth.

**Section 2. Definitions.** The following definitions apply to the provisions of this Ordinance:

(a) "Administrative Official" or "Official" means the administrative official(s) designated by the Subdivision Ordinance, or otherwise designated by the City, as the person(s) responsible for reviewing and evaluating Plats, Subdivision Plans, and Subdivision Applications under this Article, the City's Subdivision Ordinance, and other applicable City ordinances and state law, including such person(s) authorized designee.

(b) "City" means the City of Decatur, Texas

(c) "City Council" means the City Council of the City of Decatur, Texas.

(d) “Design Standards” means the Design Criteria and Construction Standards” adopted as part of Appendix “A” of the Code of Ordinances of the City of Decatur, Texas.

(e) “Planning Commission” means the Planning and Zoning Commission of the City of Decatur as designated by the City Charter and is also referred to herein as “Commission”.

(f) “Plat” means a preliminary plat, general plan (including a master plan or plat), final plat, and replat. The terms preliminary plat, general plan, final plat and replat may be referred to individually, and each shall have the meaning set forth in the Subdivision Ordinance.

(g) “Subdivision Application” means a request for approval of a Plat or Subdivision Plan required to initiate the division or development of land pursuant to Tex. Loc. Gov’t Code Ch. 212, Subchapters A and/or B, as amended.

(h) “Subdivision Plan” means a subdivision development plan, subdivision plan, subdivision construction plan, land development application, site development plan or site plan required for approval of a Plat, which is authorized under Tex. Loc. Gov’t Code Ch. 212, Subchapters A and/or B. A Subdivision Plan excludes a Zoning Plan. A Subdivision Plan does not include a site plan required for a Zoning Plan or for building permit approval.

(i) “Subdivision Ordinance” or “Subdivision Regulations” means the Decatur Subdivision Ordinance duly adopted by the Decatur City Council and codified as Appendix “A” of the Code of Ordinances of the City of Decatur, Texas, as amended, prior to the effective date of this Ordinance.

(j) “Zoning Plan” means a concept plan, site plan or similar document required to determine compliance with land use regulations which are authorized under Tex. Loc. Gov’t Code, Ch. 211, as amended.

### **Section 3. Applicability.**

(a) This Ordinance applies to the procedures for approval of Plats and Subdivision Plans for the division or development of property pursuant to Tex. Loc. Gov’t Code Ch. 212, Subchapters A and/or B.

(b) This Ordinance does not apply to the procedures for approval of Zoning Plans or plans required to accompany applications for building permits.

(c) This Ordinance does not apply to any Subdivision Application, as defined herein, that is filed before September 1, 2019.

**Section 4. Stages of Plat Approval.** Notwithstanding any other provision of the Subdivision Ordinance to the contrary, the stages of plat approval shall be as follows:

(a) Except for minor plats, as allowed, replats and amending plats, all applications for Plat approval shall consist of an application for preliminary plat approval, followed by an application for final plat approval. Applications for preliminary plat approval and final plat approval shall not be submitted nor processed simultaneously. Each plat application shall require the approval of the Planning Commission and the City Council, as hereinafter provided.

(b) Any procedure in the Subdivision Ordinance that provides for a different time period or process for approval of a Subdivision Application than that required for approval of a Subdivision Application under this Ordinance is superseded by the procedures of this Ordinance, and all other provisions not superseded by this Ordinance shall remain in full force and effect, shall be interpreted as complimentary to, and shall work in concert with the provisions adopted in this Ordinance.

(c) Except as hereinafter provided, the procedure for any appeal from a Planning Commission decision on a Subdivision Application to the City Council is superseded by the procedures of this Ordinance.

(d) Procedures for review of a Subdivision Application for completeness authorized by the Subdivision Ordinance or to be undertaken pursuant to Tex. Loc. Gov't Code sec 245.002(e) are superseded by the procedures in Sections 5 and 6 of this Ordinance, except as otherwise provided in Section 7 of this Ordinance.

(e) A Subdivision Plan must be submitted for approval with an application for preliminary or final Plat approval, unless approval of the Subdivision Plan is required prior to submittal of a Plat application. Any procedure for approval of a Subdivision Plan before the Commission or City Council approves or disapproves a Plat application is superseded by the procedures of this Ordinance, and all other provisions not superseded by this Ordinance shall remain in full force and effect, shall be interpreted as complimentary to, and shall work in concert with the provisions adopted in this Ordinance.

(f) Conditional approval of a preliminary Plat application shall mean that each such condition must be satisfied prior to final Plat approval. Such conditions are not subject to the procedures in Section 6 of this Ordinance.

(g) Because the technical requirements for submittal of a Plat or Subdivision Plan application are essential for determining whether the application should be approved, conditionally approved, or disapproved, any deficiency in the submittal requirements for such application shall be grounds for disapproval of the application,

unless the Plat or Subdivision Plan application is to be reviewed under the alternative procedures in Section 7 of this Ordinance.

**Section 5. Procedures for Approval of Plats and Subdivision Plans.**

(a) Initial Approval by Commission. The Planning Commission shall approve, approve with conditions, or disapprove a preliminary plat, final plat or Subdivision Plan application within thirty (30) days after the date the Plat or Subdivision Plan application is filed. A Plat or Subdivision Plan application is deemed approved by the Commission unless it is conditionally approved or disapproved within that period in the manner provided in subsection (e).

(b) Initial Approval by Council. The City Council shall approve, approve with conditions, or disapprove a preliminary plat, final plat or Subdivision Plan application within 30 days after the date the Commission approves the Plat or Subdivision Plan application. A Plat or Subdivision Plan application is deemed approved by the City Council unless it is conditionally approved or disapproved within that period and in the manner provided in this Subsection and documented pursuant to Subsection (e) of this Section.

(c) Extension by Agreement. The applicant may request in writing and the Planning Commission or the City Council, as applicable, may approve the request for an extension of the time for Plat or Subdivision Plan approval required by subsections (a) or (b) for a period not to exceed thirty (30) days. The written request must be made within fifteen (15) days of the date the application is filed and approved by the Commission or City Council prior to the time for a decision on the application required by subsections (a) or (b).

(d) Limitation on Submittals. Following the filing of the Plat or Subdivision Plan application, the applicant may not submit additional materials in support of the application during the initial thirty (30) day period during which the Commission or the City Council must decide the application, unless the applicant withdraws the original application and submits a new application with the additional materials. If an extension is sought and granted under subsection (c), the applicant may submit additional materials in support of the application no later than fifteen (15) days from the date the Commission or City Council is scheduled to review the application without filing a new application.

(e) Documentation for Conditional Approval or Disapproval. The Planning Commission or the City Council, as applicable, shall provide the applicant a written statement of the conditions for the conditional approval or reasons for disapproval that clearly articulates each specific condition for the conditional approval or reason for disapproval. Each such condition or reason shall be directly related to the requirements of the Subdivision Regulations, Zoning Regulations, and/or Design Standards and shall

include a citation to the applicable law, including a state law or City ordinance, that serves as the basis for the conditional approval or disapproval. The conditions or reasons shall be consistent with this Section and may not be arbitrary.

## **Section 6. Post-Decision Procedures.**

(a) Applicant's Response. After the conditional approval or disapproval of a Plat or Subdivision Plan under Section 5, the applicant may submit to the Commission or the City Council, as applicable, that conditionally approved or disapproved the Plat or Subdivision Plan, a written response that satisfies each condition for the conditional approval or that remedies each reason for disapproval provided. Neither the Commission nor the City Council may establish a deadline for an applicant to submit the response authorized by this Subsection.

(b) Reply to Applicant's Response. The Commission or City Council, as applicable, that receives an applicant's response in accordance with Subsection (a) of this Section shall determine whether to approve, conditionally approve or disapprove the applicant's previously conditionally approved or disapproved Plat or Subdivision Plan not later than the fifteenth (15<sup>th</sup>) day after the date the response was submitted by the applicant. The Commission or City Council, as applicable, may further conditionally approve or disapprove the application for a specific condition or reason that is provided to the applicant in the manner prescribed in Section 5(e) of this Article. The Commission or City Council, as applicable, shall approve the Plat or Subdivision Plan application if the response adequately addresses each condition of the conditional approval or each reason for the disapproval.

(c) Delegation to Administrative Official. The Administrative Official(s) is hereby delegated the authority to reply to an applicant's response in the manner provided in section 5(e). The applicant may appeal the administrative official's decision within 15 days thereof to the Planning Commission or the City Council, as the case may be, which shall hear the appeal at its next scheduled regular meeting. The applicant may also request a delay in the reply in order to have the response considered and decided by the Planning Commission or City Council, as the case may be, at its next scheduled regular meeting.

(d) Failure to Timely Reply. If the response meets the criteria in subsection (a) and the administrative official, or the Planning Commission or City Council, as the case may be, fails to act upon the response within the time provided in subsections (b) or (c), the plat or Subdivision Plan application shall be deemed approved.

(e) New Application Required. In the event that the administrative official, or the Planning Commission or City Council, as the case may be, timely disapproves the Plat or Subdivision Plan application, a new application and fees shall be required.

**Section 7. Alternative Review Procedures.** In lieu of the procedures set forth in Sections 5 and 6, every applicant for approval of a Subdivision Application may request in writing to follow the procedures in this Section if the request is made at the time such Subdivision Application is first submitted for filing. Election of approval under this Section does not waive the procedures in Sections 5 and 6 of this Ordinance, which shall commence as provided in subsection (c).

(a) Within ten (10) business days of the time the Subdivision Application is submitted for filing, the Administrative Official shall make a determination whether such Application meets the technical requirements for submittal. The Administrative Official shall notify the applicant in writing not later than the tenth (10<sup>th</sup>) business day after the Subdivision Application is submitted whether the Application is complete or incomplete. If the Subdivision Application is incomplete, the notice shall specify the documents or information that are necessary to complete the Application and shall also state that the application is subject to expiration, as provided in subsection (b).

(b) Following the receipt of written notice, the applicant shall have forty-five (45) days from the time the Subdivision Application was submitted for filing to submit the necessary documents or information to render such Application complete. If the applicant fails to do so, the Subdivision Application shall expire on the forty-fifth (45<sup>th</sup>) day after such Application was submitted for filing. An applicant may request a conference with the Administrative Official to assist in completing the Application. If the Subdivision Application expires, the applicant may submit a new Subdivision Application without prejudice. If the new Application is submitted within ten (10) days after the expiration of the original application, review fees will be waived.

(c) The procedures for review of an application for Plat or Subdivision Plan approval in Sections 5 and 6 of this Article shall commence on one of the following dates:

- (1) The date of the notice required by subsection (a) if the application is determined to be complete.
- (2) The date the applicant submits documents or information necessary to complete the application within the forty-five (45) day period specified in subsection (b).
- (3) The date the applicant submits a new application in the event the original application has expired.

**Section 8. Procedures for Approval of Replats.** Notwithstanding any other provision of the Subdivision Ordinance to the contrary, the procedures for replats as set forth in the Subdivision Ordinance are hereby amended as follows:

(a) A replat of a subdivision or part of a subdivision may be recorded and is controlling over the preceding Plat without vacation of the Plat if the replat is (1) signed

and acknowledged by only the owner of the property being replatted, (2) is approved by the Planning Commission and (3) does not attempt to amend or remove any covenants or restrictions. A public hearing is not required before approval of the replat.

(b) A replat without vacation of the preceding plat must conform to the requirements of Tex. Loc. Gov't Code section 212.015(a), in addition to the provisions of section 212.014, as amended. If such replat requires a variance or exception, a public hearing must be held by the Planning Commission or the City Council. If such replat does not require a variance or exception, the City shall, not later than the fifteenth (15<sup>th</sup>) day after the date the replat is approved, provide written notice by mail of the approval of the replat to each owner of a lot in the original subdivision that is within two hundred (200) feet of the lots to be replatted according to the most recent municipal or county tax roll. The notice must include (1) the zoning designation of the property after the replat; and (2) a telephone number and e-mail address that an owner of a lot may use to contact the City about the replat. This requirement does not apply to a proposed replat if the City holds a public hearing and gives notice of the hearing pursuant to Tex. Loc. Gov't Code section 212.015(b).

**Section 9. Conflict Clause.** To the extent any provisions of the Subdivision Ordinance are in conflict with this Ordinance, this Ordinance shall control and all other provisions of the Subdivision Ordinance not in conflict herewith shall remain in full force and effect.

**Section 10. Savings Clause.** It is hereby declared by the City Council of the City of Decatur that if any of the sections, paragraphs, sentences, clauses, phrases, words, or provisions of this ordinance should be declared unconstitutional or otherwise invalid for any reason, such event shall not affect any remaining sections, paragraphs, sentences, clauses, phrases, words, or provisions of this ordinance.

**Section 11. Effective Date.** This Ordinance shall take effect immediately upon its passage upon second reading as prescribed by Charter and state law.

**PRESENTED ON FIRST READING THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.**

**PRESENTED ON SECOND READING AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019 BY A VOTE OF \_\_\_\_\_ AYES, \_\_\_\_\_ NAYS, \_\_\_\_\_ ABSTENTIONS, AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF DECATUR, TEXAS.**

**APPROVED:**

\_\_\_\_\_  
Martin B. Woodruff, MAYOR



**ATTEST:**

\_\_\_\_\_  
Diane Cockrell, TRMC, CITY SECRETARY

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Mason L. Woodruff, CITY ATTORNEY