



**RULE INTERPRETATION DETERMINATION**

**Determination #:** 2019-005

**Title:** Impact of HB 2439 on Neighborhood Conservation Districts and Corridor Districts

**Drafted by:** Tony Felts, AICP, Interim Policy Administrator

**Rules in Question:** Section 35-335 Corridor Overlay Districts and Section 35-339.01 Corridor Districts

**Department Action:** Modification of relevant sections of the Unified Development Code (UDC) in order to comply with HB 2439 which was passed during the 86<sup>th</sup> Legislature

Michael Shannon, PE, CBO  
Development Services Director

9/9/19

Date

**Effective Date of Determination:** September 1, 2019

*Please note RIDs often result in direct or related UDC amendments to codify the clarification addressed within the RID. RIDs can also be superseded by subsequent RIDs or UDC amendments. The Development Services Department will remove RIDs from the website when they are no longer valid.*

**Staff Analysis:**

This RID is a customer and staff clarification effort to incorporate changes to the Neighborhood Conservation Districts (NCDs) and Corridor Overlays in order to address changes to state law made by House Bill 2439. HB 2439 was signed into law by Governor Abbott on June 14, 2019, and becomes effective on September 1, 2019.

HB 2439 restricts the ability of a municipality to regulate the use, installation, or method of using building materials if that building product or material is approved for use by a national model code published within the last three code cycles. HB 2439 includes several exemptions for this restriction including:

- Military Lighting Overlays

- Buildings in designated Historic Districts and Local Historic Landmarks
- River Improvement Overlay Districts (RIOs)
- World Heritage Buffers

Additionally, Section 3000.002.(c)(6) of Texas Government Code, as promulgated by HB 2439, states:

“This section does not apply to:

.....

(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;”

The full text of HB 2439 is attached to this RID in Exhibit A.

Section 35-335(a)(1) of the Unified Development Code (UDC) states that NCDs “contribute significantly to the overall character and identity of the city” and that they are “worthy of preservation and protection.” The Section further states that the intent is to “preserve, protect, enhance, and perpetuate the value” of these districts.

The Statement of Purpose for Section 35-399.01. of the UDC states that corridor overlays are “important because they have shaped the sense of what individual neighborhoods of the city are in their role as historic entrances to the city or as traditional commercial centers” and that “other corridors are significant because they serve as gateways to the city or because of surrounding natural, historic, cultural, and aesthetic areas.” The stated intent of the Corridor Overlays section is to “preserve, enhance, and perpetuate the value of these roadway corridors.”

**Staff Position and Interpretation:**

Given that there is an exemption in Section 3000.002.(c)(6) of Texas Government Code as promulgated by HB 2439, it is staff’s position that the exemption for the regulation of building materials and methods in NCDs and Corridor Overlays which existed in their current form as of April 1, 2019, applies, and that building materials and methods in these limited circumstances may continue to be regulated by these NCDs and Corridor Overlays.

Staff also holds the position that new NCDs and Corridor Overlays may be created after April 1, 2019, however, these NCDs and Corridor Overlays cannot regulate building materials and methods.

**Future UDC Amendments:**

To codify the changes in State Law, staff suggests the following UDC amendments:

Sec. 35-335. - "NCD" Neighborhood Conservation District.

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(e) **Design Standards for Neighborhood Conservation Districts Established Prior to April 1, 2019.**

- (1) The neighborhood conservation plan approved as part of the zoning ordinance creating a neighborhood conservation district prior to April 1, 2019 shall include design standards for new construction of any building or structure, or the relocation or rehabilitation to the street facade of an existing building or structure.
- (2) The neighborhood conservation plan, and requisite design standards shall not apply to those activities which constitute ordinary repair and maintenance, i.e., using the same or similar material and design.
- (3) The design standards for the neighborhood conservation district must include at a minimum (or note the inapplicability), the following elements governing the physical characteristics and features of all property (public or private) within the proposed district:
  - A. Building height, number of stories;
  - B. Building size, massing;
  - C. Principal elevation features;
  - D. Lot size, coverage;
  - E. Front and side setbacks;
  - F. Off-street parking and loading requirements;
  - G. Roof line and pitch;
  - H. Paving, hardscape covering.
- (4) In addition, the design standards may include, but shall not be limited to, the following elements:
  - A. Building orientation;
  - B. General site planning (primary, ancillary structures);
  - C. Density;
  - D. Floor area ratio;
  - E. Signage;
  - F. Architectural style and details;
  - G. Building materials;
  - H. Garage entrance location;
  - I. Window/dormer size and location;
  - J. Landscaping;
  - K. Fences and walls;

- L. Entrance lighting;
- M. Driveways, curbs and sidewalks;
- N. Utility boxes, trash receptacles;
- O. Street furniture;
- P. Solar systems, components;
- Q. Building relocation;
- R. Right-of-way (exceeding public works standards).

(5) Existing neighborhood conservation plans shall not be modified after April 1, 2019, with respect to building materials or methods.

**(f) Design Standards for Neighborhood Conservation Districts Established On or After April 1, 2019.**

- (1) The neighborhood conservation plan approved on or after April 1, 2019, as part of the zoning ordinance creating a neighborhood conservation district shall include design standards for new construction of any building or structure, or the relocation or rehabilitation to the street facade of an existing building or structure, but in accordance with state law, shall not include any standards or requirements relating to building materials or methods.
- (2) The neighborhood conservation plan, and requisite design standards shall not apply to those activities which constitute ordinary repair and maintenance, i.e., using the same or similar design.
- (3) The design standards for the neighborhood conservation district must include at a minimum (or note the inapplicability), the following elements governing the physical characteristics and features of all property (public or private) within the proposed district:
  - A. Building height, number of stories;
  - B. Building size, massing;
  - C. Principal elevation features;
  - D. Lot size, coverage;
  - E. Front and side setbacks;
  - F. Off-street parking and loading requirements;
  - G. Roof line and pitch;
  - H. Paving, hardscape covering.
- (4) In addition, the design standards may include, but shall not be limited to, the following elements:
  - A. Building orientation;
  - B. General site planning (primary, ancillary structures);

- C. Density;
- D. Floor area ratio;
- E. Signage;
- F. Architectural style and details;
- G. Garage entrance location;
- H. Window/dormer size and location;
- I. Landscaping;
- J. Fences and walls;
- K. Entrance lighting;
- L. Driveways, curbs and sidewalks;
- M. Utility boxes, trash receptacles;
- N. Street furniture;
- O. Building relocation;
- P. Right-of-way (exceeding public works standards).

(5) The design standards in a neighborhood conservation plan adopted on or after April 1, 2019, shall not include elements related to build materials or methods.

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Sec. 35-339.01. - Corridor Districts.

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(f) **Development and Design Standards for Corridor Overlays Established Prior to April 1, 2019.** Development and design standards for ~~the~~a corridor district established prior to April 1, 2019, may only include the following elements and no others governing the physical characteristics and features of all property (public or private) within the proposed corridor district:

- (1) Siting, grading;
- (2) Building size;
- (3) Lot coverage; floor area ratio;
- (4) Front and side setbacks;
- (5) Lot frontage;
- (6) Driveway size and sidewalks;
- (7) Parking, off-street parking and loading requirements;
- (8) Screening of lighting for entrances, parking lots, walkways and building exteriors;
- (9) Screening; fences, walls and berms;

- (10) Landscaping to encourage the use of native trees and plants;
- (11) Tree preservation;
- (12) Natural areas to encourage the use of native trees and plants;
- (13) Noise levels;
- (14) Building materials;
- (15) Trash receptacles, utility boxes;
- (16) Satellite dishes and components to the extent permitted by federal laws and regulations;
- (17) Solar systems and components.

Existing development and design standards for Corridor Overlays shall not be modified after April 1, 2019, with respect to building materials or methods.

(g) **Development and Design Standards for Corridor Overlays Established On or After April 1, 2019.** Development and design standards for a corridor district established on or after April 1, 2019, may only include the following elements and no others governing the physical characteristics and features of all property (public or private) within the proposed corridor district:

- (1) Siting, grading;
- (2) Building size;
- (3) Lot coverage; floor area ratio;
- (4) Front and side setbacks;
- (5) Lot frontage;
- (6) Driveway size and sidewalks;
- (7) Parking, off-street parking and loading requirements;
- (8) Screening of lighting for entrances, parking lots, walkways and building exteriors;
- (9) Screening; fences, walls and berms;
- (10) Landscaping to encourage the use of native trees and plants;
- (11) Tree preservation;
- (12) Natural areas to encourage the use of native trees and plants;
- (13) Noise levels;
- (14) Location of trash receptacles and utility boxes;

The development and design standards adopted on or after April 1, 2019, shall not include elements related to build materials or methods.