

ORDER OF THE COMMISSIONERS COURT OF MCLENNAN COUNTY,
TEXAS REQUIRING THE APPLICATION OF SUBCHAPTER F OF CHAPTER
233 OF THE TEXAS LOCAL GOVERNMENT CODE TO NEW RESIDENTIAL
CONSTRUCTION IN UNINCORPORATED MCLENNAN COUNTY SUBJECT
ONLY TO EXCEPTIONS EXPRESSLY PROVIDED THEREIN

WHEREAS, Subchapter F of Chapter 233 of the *Texas Local Government Code* is entitled “Residential Building Code Standards applicable to unincorporated areas of certain counties”; and

WHEREAS, Subchapter F was enacted and has been amended to address the fact that construction in unincorporated areas often goes unregulated because of the absence of laws permitting such regulation; and

WHEREAS, unregulated construction creates public health and safety concerns; and

WHEREAS, the Commissioners Court desires to protect the health and safety of the residents of the unincorporated areas of McLennan County by requiring compliance with Subchapter F.

NOW, THEREFORE BE IT ORDERED BY THE COMMISSIONERS COURT OF MCLENNAN COUNTY, TEXAS THAT:

1. ***Application of Subchapter F Required.*** The provisions of Subchapter F, Chapter 233 of the *Texas Local Government Code* are HEREBY REQUIRED to be applied in the unincorporated areas of McLennan County.

2. ***Incorporation of Subchapter F.*** A copy of Subchapter F of Chapter 233 of the *Texas Local Government Code* is attached hereto and incorporated herein (hereinafter “Subchapter F”).

3. ***New Residential Construction*** means:

a) construction of a new single-family house or duplex on a vacant lot;

b) construction of an addition to an existing single-family house or duplex, if the addition will increase the square footage or value of the existing residential building by more than 50 percent.

4. ***Applicable Building Code.*** New Residential Construction in the unincorporated area of McLennan County begun after the effective date of this Order must comply with either the International Residential Code published as of May 1, 2008 or the version of the International Residential Code that is applicable within the City of Waco.

5. ***Required Inspections.*** A person who builds New Residential Construction must have the construction inspected in strict compliance with the provisions of Section 233.154 of Subchapter F (see attached) if the construction is begun after the effective date of this Order. The three required inspections during the construction project, as applicable must be performed at (1)

the foundation stage, before the placement of concrete; (2) the framing and mechanical systems stage, before covering with drywall or other interior wall covering; and (3) completion of construction of the residence. For remodeling construction to an existing residence in which the structure's square footage or value will increase by more than fifty percent, the inspection requirements must be performed as necessary based on the scope of work of the construction project.

6. **Inspectors.** The builder is responsible for contracting for the performance of the required inspections with (1) a licensed engineer; (2) a registered architect; (3) a professional inspector licensed by the Texas Real Estate Commission; (4) a plumbing inspector employed by a municipality and licensed by the Texas State Board of Plumbing Examiners; (5) a building inspector employed by a political subdivision; or (6) an individual certified as a residential combination inspector by the International Code Council. A builder may use the same inspector for all the required inspections or a different inspector for each required inspection

7. **Pre-Commencement Notice.** After the effective date of this Order, **before commencing New Residential Construction** a builder must provide the McLennan County Engineer's Office with notice on a form prescribed by the County Engineer's Office of:

- a) the location of the New Residential Construction;
- b) the approximate date by which the New Residential Construction will be commenced; and
- c) the version of the International Residential Code that will be used to construct the new residential construction.

Failure to provide the notice before commencement of the construction is a criminal offense (misdemeanor) as set forth in §233.157 of Subchapter F and may subject the builder to criminal prosecution and/or other remedies as provided for in Subchapter F.

8. **Notice of Inspection.** For construction begun after the effective date of this Order, not later than the 10th day after the final inspection the builder shall submit notice of the inspection to (1) the County Engineer's office; and (2) the person for whom the new residential construction is being built, if different from the builder, stating whether or not the inspection showed compliance with the building code standards applicable to that phase of construction on a form required by the County Engineer's Office. On failure to provide the required notice, the County may take any or all of the following actions: (1) refer the inspector to the appropriate regulatory authority for discipline; (2) in a suit brought by the appropriate attorney representing the county in the district court, obtain appropriate injunctive relief to prevent a violation or threatened violation of the required notice from continuing or occurring; or (3) refer the builder for prosecution under Section 233.157.

9. **Failure of Construction to Comply with Building Code Standards.** If the Notice of Inspection to the County **does not indicate compliance with the building code standards**, the County may take either or both of the following actions: bring an action for injunctive relief to

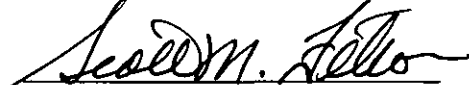
prevent the violation or threatened violation of the building standard from continuing or occurring, or may refer the builder for prosecution for the criminal offense set forth in §233.157 of Subchapter F.

10. **Exceptions and Defenses.** The only exceptions to application of this Order or affirmative defenses to violations of the requirements of Subchapter F are those expressly set out in Subchapter F.


11. **Order Publicly Adopted.** This Order was enacted at a meeting held in compliance with the Texas Open Meetings Act.

12. **Effective Date.** The effective date of this Order is the date it is passed by the McLennan County Commissioners Court.,

PASSED THIS 15 DAY OF SEPTEMBER, 2020.


SCOTT M. FELTON
COUNTY JUDGE
MCLENNAN COUNTY, TEXAS

ATTEST:


McLennan County Clerk
or Designated Deputy Clerk

SUBCHAPTER F. RESIDENTIAL BUILDING CODE STANDARDS APPLICABLE TO
UNINCORPORATED AREAS OF CERTAIN COUNTIES

Sec. 233.151. DEFINITIONS. (a) In this subchapter, "new residential construction" includes:

(1) residential construction of a single-family house or duplex on a vacant lot; and

(2) construction of an addition to an existing single-family house or duplex, if the addition will increase the square footage or value of the existing residential building by more than 50 percent.

(b) The term does not include a structure that is constructed in accordance with Chapter 1201, Occupations Code, or a modular home constructed in accordance with Chapter 1202, Occupations Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1318 (H.B. 2833), Sec. 1, eff. September 1, 2009.

Sec. 233.152. APPLICABILITY. This subchapter applies only to a county that has adopted a resolution or order requiring the application of the provisions of this subchapter and that:

(1) is located within 50 miles of an international border; or

(2) has a population of more than 100.

Added by Acts 2009, 81st Leg., R.S., Ch. 1318 (H.B. 2833), Sec. 1, eff. September 1, 2009.

Sec. 233.153. BUILDING CODE STANDARDS APPLICABLE. (a) New 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.

(b) Standards required under this subchapter apply only to new residential construction that begins after September 1, 2009.

(c) If a municipality located within a county to which this subchapter applies has adopted a building code in the municipality's extraterritorial jurisdiction, the building code adopted by the municipality controls and building code standards under this subchapter have no effect in the municipality's extraterritorial jurisdiction.

(d) This subchapter may not be construed to:

(1) require prior approval by the county before the beginning of new residential construction;

(2) authorize the commissioners court of a county to adopt or enforce zoning regulations; or

(3) affect the application of the provisions of Subchapter B, Chapter 232, to land development.

(e) In the event of a conflict between this subchapter and Subchapter B, Chapter 232, the provisions of Subchapter B, Chapter 232, control.

(f) A county may not charge a fee to a person subject to standards under this subchapter to defray the costs of enforcing the standards.

Added by Acts 2009, 81st Leg., R.S., Ch. 1318 (H.B. 2833), Sec. 1, eff. September 1, 2009.

Sec. 233.154. INSPECTION AND NOTICE REQUIREMENTS. (a) A person who builds new residential construction described by Section 233.153 shall have the construction inspected to ensure building code compliance in accordance with this section as follows:

(1) for new residential construction on a vacant lot, a minimum of three inspections must be performed during the construction project to ensure code compliance, as applicable, at the following stages of construction:

(A) the foundation stage, before the placement of concrete;

(B) the framing and mechanical systems stage, before covering with drywall or other interior wall covering; and

(C) on completion of construction of the residence;

(2) for new residential construction of an addition to an existing residence as described by Section 233.151(a)(2), the inspections under Subdivision (1) must be performed as necessary based on the scope of work of the construction project; and

(3) for new residential construction on a vacant lot and for construction of an addition to an existing residence, the builder:

(A) is responsible for contracting to perform the inspections required by this subsection with:

(i) a licensed engineer;

(ii) a registered architect;

(iii) a professional inspector licensed by the Texas Real Estate Commission;

(iv) a plumbing inspector employed by a municipality and licensed by the Texas State Board of Plumbing Examiners;

(v) a building inspector employed by a political subdivision; or

(vi) an individual certified as a residential combination inspector by the International Code Council; and

(B) may use the same inspector for all the required inspections or a different inspector for each required inspection.

(b) If required by a county to which this subchapter applies, before commencing new residential construction, the builder shall provide notice to the county on a form prescribed by the county of:

- (1) the location of the new residential construction;
- (2) the approximate date by which the new residential construction will be commenced; and
- (3) the version of the International Residential Code that will be used to construct the new residential construction before commencing construction.

(c) If required by the county, not later than the 10th day after the date of the final inspection under this section, the builder shall submit notice of the inspection stating whether or not the inspection showed compliance with the building code standards applicable to that phase of construction in a form required by the county to:

- (1) the county employee, department, or agency designated by the commissioners court of the county to receive the information; and
- (2) the person for whom the new residential construction is being built, if different from the builder.

Added by Acts 2009, 81st Leg., R.S., Ch. 1318 (H.B. 2833), Sec. 1, eff. September 1, 2009.

Sec. 233.155. ENFORCEMENT OF STANDARDS. (a) If proper notice is not submitted in accordance with Sections 233.154(b) and (c), the county may take any or all of the following actions:

- (1) refer the inspector to the appropriate regulatory authority for discipline;
- (2) in a suit brought by the appropriate attorney representing the county in the district court, obtain appropriate injunctive relief to prevent a violation or threatened violation of a standard or notice required under this subchapter from continuing or occurring; or
- (3) refer the builder for prosecution under Section 233.157.

(b) If the notice the builder provided to the county under Section 233.154(c) does not indicate that the inspection showed

compliance with the applicable building code standards, the county may take either or both of the actions under Subsections (a) (2) and (3).

Added by Acts 2009, 81st Leg., R.S., Ch. 1318 (H.B. 2833), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 774 (H.B. 2040), Sec. 1, eff. September 1, 2017.

Sec. 233.156. EXISTING AUTHORITY UNAFFECTED. The authority granted by this subchapter does not affect the authority of a commissioners court to adopt an order under other law.

Added by Acts 2009, 81st Leg., R.S., Ch. 1318 (H.B. 2833), Sec. 1, eff. September 1, 2009.

Sec. 233.157. PENALTY. (a) A builder commits an offense if:

(1) the builder fails to provide proper notice in accordance with Sections 233.154(b) and (c); or

(2) as provided by Section 233.155(b), the builder does not provide notice under Section 233.154(c) that indicates that the inspection showed compliance with the applicable building code standards.

(b) An offense under this section is a Class C misdemeanor.

(c) An individual who fails to provide proper notice in accordance with Sections 233.154(b) and (c) is not subject to a penalty under this subsection if:

(1) the new residential construction is built by the individual or the individual acts as the individual's own contractor; and

(2) the individual intends to use the residence as the individual's primary residence.

(d) It is an affirmative defense to prosecution for failure to submit proper notice under Section 233.154(c) if the builder's failure to submit a notice is the result of the failure of the person who performed the inspection to provide appropriate documentation to the builder for submission to the county.

Added by Acts 2009, 81st Leg., R.S., Ch. 1318 (H.B. 2833), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 774 (H.B. 2040), Sec. 2, eff. September 1, 2017.

J.A. "ANDY" HARWELL, County Clerk
McLennan County, Texas

FILED: **SEP 15 2020**

By Myrcetez Gowan-Perkins,
Deputy