

MUNICIPAL REGULATION OF BUILDING MATERIALS AND HISTORICAL DISTRICTS

1. Does the City of Olmos Park (the “City”) have the authority to regulate or prevent demolition of private residences within the jurisdiction of the City?

The City can regulate demolitions in terms of requiring a permit to ensure compliance with approved demolition methods, but cannot prevent the demolition of a residential building. The only exception to this is discussed in 6 below.

2. Can the City regulate or specify which building materials can be used for a new building, or a renovation or remodel of an existing building?

No. Recent state legislation passed in 2019 during the 86th Legislative Session (HB 2439) prohibits Texas cities from limiting the types of materials used to construct buildings. So long as a material is approved for use by a national model code such as the International Building Code (among others), the City cannot prevent use of that material in building construction. The only exception to this is discussed in 6 below.

3. Are there any devices/mechanisms that the City can use to restrict demolition and/or regulate or review building materials?

The City can regulate demolitions to ensure that they are done safely and minimize nuisances, but cannot prevent demolition of a building by its owner. The City can review building materials to ensure that the materials are approved by an international building code, but cannot prevent the use of a material that is approved by an international building code.

4. If yes, what is the process for establishing these?

The City has a building official who is responsible for reviewing proposed plans for construction, renovation and demolition of buildings to ensure that the proposed action complies with City zoning laws, local permitting rules, and international building codes, as applicable. Some Texas cities choose to create a board or commission, usually referred to as an Architectural Review Board or Commission, to advise the building official as to whether proposed construction projects satisfy the requirements for a permit and provide non-binding recommendations to applicants on suitability or design elements. However, neither the building official nor a board or commission can deny a permit application that meets all of the requirements of the City.

5. If a city were to adopt any of these devices, can the governing body of the City restrict their powers?

State law allows municipal governments to create boards or commissions to help carry out the duties of the municipality. When creating a new board or commission, a city can establish the extent (or limit) of the powers and duties of the board or commission. However, these entities are advisory-only and do not have any final decision-making authority which would remain with the City Council.

6. Can the City designate a building as historically, architecturally, or culturally significant and prevent the demolition or significantly regulate the external renovation of the building?

Yes. State and federal law allow the Texas Historical Commission to designate historical buildings so that they can be preserved. A city can assist the Texas Historical Commission by establishing a special board composed of experts in history and/or architecture to identify local buildings of particular historical or architectural significance to preserve such buildings. However, the process for a City to qualify under this program is very costly and complex requiring among, other things, creating a new position within the City government that must be filled by an expert in architecture or architectural history to oversee administration of the City's historical building program, which could cost the City tens of thousands of dollars per year.

If a City is NOT qualified under the Texas Historical Commission's program, it can still designate historical buildings within the city, but cannot regulate the demolition or renovation of such buildings unless the owner consents – and the owner, or a subsequent owner, can revoke that consent at any time. This withdraw of consent was also added in 2019 during the 86th Legislative Session (HB 2439). Because the consent is revocable at any time, a city's designation outside of the Texas Historical Commission's program lacks a fundamental characteristic of a true regulation.

7. Can the owner of a true or perceived historical building use a deed restriction to prevent demolition of the structure?

When an owner sells property to another person, the deed to the property may contain certain restrictions. Some of these restrictions may apply only to that property, while others may apply to entire subdivisions, often subject to oversight by a homeowners association that is responsible for enforcing the restrictions. Whether a particular deed restriction is enforceable must be decided on a case-by-case basis by a court. Cities are not responsible for enforcing deed restrictions – a dispute about whether a deed restriction prohibiting demolition of a building could be enforced would have to be settled between private parties without any involvement by a city government.

8. Are these City specific laws, state or federal laws. How old are they, and what can I do about them if I do or do not like them?

This city of Olmos Park is a General Law City which means it can only exercise powers that are given to it by the Legislature or the State Constitution. A home-rule city (population over 5,000) has broader authority, but most of these particular issues all cities are still bound by these same laws regardless of size. The restrictions on the City discussed above are placed on it by the state and most of the laws discussed were passed in 2019 during the 86th Legislative Session by the state legislature. You can contact your state representative or state senator to provide your feedback regarding these laws. If the City attempts to violate these laws, a court would likely declare that any such action is void and unenforceable. However, the City could also be liable for damages if it took action that violated the rights of a property owner.