



October 9, 2009

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Midland County

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**Executive Director**

Donald Lee

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Midland ~ Nueces  
Randall ~ Rockwall  
San Patricio ~ Tarrant  
Travis ~ Williamson  
Wise

500 West 13<sup>th</sup> Street  
Austin, TX 78701

Phone: 512.476.6174  
Fax: 512.476.5122

www.cuc.org

To: All Urban Counties  
From: Donald Lee, Executive Director

**Re: Informational Documents on HB 2833 by Marquez/Shapleigh, Building Code Authority in the Unincorporated Areas**

Attached please find a Q&A document, sample resolutions, and sample notice forms for HB 2833 by Marquez/Shapleigh. A copy of the bill is also included.

HB 2833 was passed during the 81<sup>st</sup> Legislative Session. The bill gives counties limited, permissive authority to impose building codes in the unincorporated area.

The bill grants counties the authority to adopt a resolution or order requiring builders to construct homes to a code and to obtain inspections during different stages of construction.

HB 2833 also allows counties to require builders to provide notice of a construction project and notice of building inspections.

The grant of authority to counties was in response to the legislature's decision to abolish the Texas Residential Construction Commission (TRCC), which resulted in the elimination of all enforceable residential building codes in the unincorporated areas.

The attached documents provide a detailed analysis of the bill, including steps a county needs to take to enforce the provisions. A county can act by adopting a resolution. A sample resolution and sample notice forms are included and may be used as a guide in adopting your own.

If you have any questions, please feel free to contact me or Veronica Trevino by calling the Urban Counties office at 512/476-6174 or by email at donlee@cuc.org or veronica.trevino@cuc.org.

Sincerely,

Donald Lee  
Executive Director

**Attachments:**

1. HB 2833 Q&A (pg 2)
2. Sample Resolutions
  - a. Option 1 – Includes Notice Requirements (pg 6)
  - b. Option 2 – Does Not Include Notice Requirements (pg 8)
3. Sample Notice Forms
  - a. Notice of Construction (pg 10)
  - b. Notice of Inspections (pg 11)
4. Copy of HB 2833 (pg 13)

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To: All Urban Counties

From: Donald Lee, Executive Director

**Re: Q&A: HB 2833 Gives Counties Building Code Authority in the Unincorporated Areas**

Beginning September 1, 2009, counties will have limited authority to enforce building codes in the unincorporated area for new residential construction. HB 2833 by Marquez/Shapleigh, passed during the 81<sup>st</sup> Legislative Session, allows counties to require residential building code standards, inspections and notices of construction and inspection.

It is important for county officials to know what the bill does, why it's needed, and what options and responsibilities the county has if it decides to adopt the law.

**What is HB 2833?**

HB 2833 grants counties the authority to impose residential building code standards for new residential construction in the unincorporated area by enacting Subchapter F, Chapter 233 of the Texas Local Government Code.

HB 2833 was supported by El Paso County, the Urban Counties, and the Texas Association of Builders.

**What counties does HB 2833 apply to?**

HB 2833 applies to counties with a population of more than 100 (excludes Loving County).

**Why was HB 2833 adopted?**

- During the 81<sup>st</sup> Legislative Session, the Legislature decided to abolish the Texas Residential Construction Commission (TRCC), the agency charged with ensuring quality construction and enforcing building codes.
- The decision to eliminate the Commission means that enforceable residential building codes will no longer apply in the unincorporated area of the 254 counties in Texas.
- HB 2833, as originally written, gave El Paso County authority to enforce the international residential code. It was expanded in order to cover the void left by the abolishment of the TRCC.

**How does HB 2833 grant counties the authority to impose residential building codes?**

HB 2833 grants counties the authority to adopt a resolution or order requiring all new residential construction and certain home additions be built to a code. Upon adoption of this requirement, a minimum of three inspections during different phases on construction must be performed.

A county also has the authority to, when adopting the order or resolution, require a builder to provide notice of a construction project and notice of inspections. If a county decides to require notices, it may take action against a person who does not provide proper notice.

**What options does HB 2833 give a county for imposing building codes?**

A county has several options to consider when deciding to impose building code standards. For instance, it does not have to utilize the authority to require notices granted in HB 2833. It may adopt the building code and inspection requirements without adopting the notice requirements.

A county's options are as follows:

- 1) Do nothing;
- 2) Require construction conform to a code and inspections be performed; or
- 3) Require construction conform to a code and inspections be performed, and require the notice of construction **and/or** the notice of inspections be provided.

**What building codes must construction conform to?**

Builders must choose to conform to either:

- The International Residential Code (IRC) published as of May 1, 2008; or
- The version of the IRC as modified by the county seat of that county.

**Can a county make local modifications to the building code?**

No. A county does not have the authority to make modifications to the code.

**What construction projects do the required inspections apply to?**

- Inspections apply to:
  - Single-family houses or duplex construction on a vacant lot; and
  - Additions to an existing house or duplex if it will increase the square footage or value by more than 50%.

**When must inspections be conducted?**

- A minimum of three inspections must be performed during each of the following stages of construction:
  - The foundation stage, before the placement of concrete
  - The framing and mechanical systems stage, before covering with drywall or other interior wall covering; and
  - On completion of construction.

**Who must conduct the inspections?**

- Inspections must be conducted by licensed professionals contracted by the builder. The county **does not** bear the cost of the inspections.
- A builder may contract to perform the inspections with:
  - A licensed engineer;
  - A registered architect;
  - A professional inspector licensed by the Texas Real Estate Commission;
  - A plumbing inspector employed by a municipality and licensed by the Texas State Board of Plumbing Examiners;
  - A building inspector employed by a political subdivision; or
  - An individual certified as a residential combination inspector by the International Code Council.

### **What notices may a county require from the builder?**

If a county decides to adopt the notices requirement, it may require a builder to provide:

- Notice of a construction project (notice includes the location of the new residential construction, start date, and version of the building code that will be used); **and/or**
- Notice of each inspection stating whether or not it showed compliance with the building code.
  - Notice of the inspections must be submitted to the county no later than the 10<sup>th</sup> day after the date of the final inspection.

### **Who receives the notices and how are they submitted?**

The commissioners court must prescribe the form for the notices and designate which agency, department or employee will receive them.

Notices of inspection must also be provided to the person for whom the new residential construction is being built, if different from the builder.

### **What types of notice forms are counties that are already imposing building codes using and who is receiving them?**

The types of notice forms vary in each county that has decided to impose building codes. Some counties have prescribed paper forms, while others have decided to require notices be submitted electronically.

The designee also varies from county to county. For example, one county designated the county engineer to receive the notices while another designated the transportation and natural resources department.

### **What actions may a county take if proper notice is not submitted?**

If proper notice is not submitted, a county may take any or all of the following actions:

- File for an injunction against a builder to prevent a violation of standard or notice required from continuing or occurring;
- Refer the builder to the county or district attorney for prosecution under a Class C misdemeanor; and
- Refer the matter of an inspector that fails to perform inspections properly to the appropriate regulatory authority for discipline.
- **Note:** Penalties do not apply to a person who builds their own home.

### **What enforcement authority does a county have to enforce building codes?**

Under the provisions of HB 2833, county enforcement authority arises only if proper notice is not submitted. However, county and district attorneys may be aware of other existing authority inherent to a county that could be used to enforce building codes. For example, a county attorney can use their general law enforcement authority to prosecute deceptive trade practices under the Deceptive Trade Practices Consumer Protection Act or other similar statutes, which can provide some additional protection against the construction of substandard housing.

### **May a county charge a fee to enforce the building codes?**

- No, a county may not charge a fee for enforcement.

### **May a county require prior approval before construction begins?**

- No, a county may not require prior approval before the beginning of new residential construction.

**When does HB 2833 become effective?**

- HB 2833 becomes effective September 1, 2009.

**What resources are available from the State to help counties manage the adoption of HB 2833?**

- The TRCC uses a web-based system to allow building inspectors to report performance of the inspections. The agency is willing to provide the program to any county that is interested in using it.
- TRCC is also willing to answer any additional questions counties might have. You can contact Duane Waddill, Executive Director, at 512/463/9524 or by email at [duane.waddill@trcc.state.tx.us](mailto:duane.waddill@trcc.state.tx.us).



October 9, 2009

4. **Open Meeting Act.** It is hereby officially found and determined that the meeting at which this Order was passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Texas Open Meetings Act, Ch. 551, Texas Government Code.
  
5. **Effective Date.** This Order shall be effective on the date of its adoption, as reflected below.

**BE IT SO ORDERED.**

Passed and Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by a vote of \_\_\_\_\_  
in favor and \_\_\_\_\_ against, \_\_\_\_\_ abstaining.

\_\_\_\_\_ COUNTY, TEXAS

By: \_\_\_\_\_

\_\_\_\_\_  
COUNTY JUDGE

Attest:

\_\_\_\_\_  
COUNTY CLERK



October 9, 2009

**BE IT SO ORDERED.**

Passed and Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by a vote of \_\_\_\_\_  
in favor and \_\_\_\_\_ against, \_\_\_\_\_ abstaining.

\_\_\_\_\_ **COUNTY, TEXAS**

By: \_\_\_\_\_

\_\_\_\_\_  
COUNTY JUDGE

Attest:

\_\_\_\_\_  
COUNTY CLERK



TARRANT COUNTY

NOTICE OF RESIDENTIAL CONSTRUCTION
IN UNINCORPORATED AREA

Received
Related OSSF
Application #

BUILDER / CONTRACTOR INFORMATION

COMPANY NAME:
BUSINESS ADDRESS:
MAILING ADDRESS (if different from above):
PHONE NUMBER: FAX NUMBER:
EMAIL ADDRESS:
CONTACT PERSON:

PROJECT INFORMATION

- TYPE OF CONSTRUCTION: (Check One)
1) New Residential Construction on a vacant lot
2) Addition to an Existing Residential Unit

LOCATION:
Address - zip
Lot and Block # - Subdivision -
OR
Survey Tract

PLANNED DATE TO BEGIN CONSTRUCTION:

- RESIDENTIAL CODE TO BE USED IN CONSTRUCTION: (Check One)
1.) INTERNATIONAL RESIDENTIAL CODE - published May 1, 2008
2.) INTERNATIONAL RESIDENTIAL CODE - applicable in Fort Worth

Authorized Representative Signature Printed Name



**TARRANT COUNTY**

**NOTICE OF RESIDENTIAL CONSTRUCTION  
INSPECTION COMPLIANCE  
IN UNINCORPORATED AREA**

Received _____
Related OSSF Application # _____

**INSPECTOR INFORMATION**

NAME: \_\_\_\_\_  
BUSINESS ADDRESS: \_\_\_\_\_  
MAILING ADDRESS (if different from above): \_\_\_\_\_  
\_\_\_\_\_  
PHONE NUMBER: \_\_\_\_\_ FAX NUMBER: \_\_\_\_\_  
EMAIL ADDRESS: \_\_\_\_\_  
PROFESSIONAL REGISTRATION: \_\_\_\_\_

**PROJECT INFORMATION**

DATE OF INSPECTION: \_\_\_\_\_

TYPE OF CONSTRUCTION: (Check One)

- 1) New Residential Construction on a vacant lot
- 2) Addition to an Existing Residential Unit

LOCATION:

Address - \_\_\_\_\_ zip \_\_\_\_\_

Lot and Block # - \_\_\_\_\_ Subdivision - \_\_\_\_\_

OR

Survey \_\_\_\_\_ Tract \_\_\_\_\_

RESIDENTIAL CODE USED IN CONSTRUCTION: (Check One)

- 1.) INTERNATIONAL RESIDENTIAL CODE – published May 1, 2008
- 2.) INTERNATIONAL RESIDENTIAL CODE - applicable in Fort Worth

CONSTRUCTION PHASE: (Check One)

- 1) FOUNDATION STAGE (before placement of concrete)
- 2) FRAMING AND MECHANICAL SYSTEMS STAGE  
(before covering with drywall or other interior wall covering)
- 3) COMPLETION

INSPECTION CONCLUSION:

At the indicated stage of construction the project indicated above is: (Check One)

- 1) IN COMPLIANCE
- 2) NOT IN COMPLIANCE

with the residential code used in construction.

COMMENTS:

SIGNATURE OF INSPECTOR:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

ENROLLED

1 AN ACT

2 relating to certain building code standards applicable to the  
3 unincorporated areas of certain counties; providing a penalty.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Chapter 233, Local Government Code, is amended  
6 by adding Subchapter F to read as follows:

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

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

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

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

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

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

24 (1) is located within 50 miles of an international

1 border; or

2 (2) has a population of more than 100.

3 Sec. 233.153. BUILDING CODE STANDARDS APPLICABLE. (a) New  
4 residential construction of a single-family house or duplex in the  
5 unincorporated area of a county to which this subchapter applies  
6 shall conform to the version of the International Residential Code  
7 published as of May 1, 2008, or the version of the International  
8 Residential Code that is applicable in the county seat of that  
9 county.

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

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

18 (d) This subchapter may not be construed to:

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

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

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

25 (e) In the event of a conflict between this subchapter and  
26 Subchapter B, Chapter 232, the provisions of Subchapter B, Chapter  
27 232, control.

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

4           Sec. 233.154. INSPECTION AND NOTICE REQUIREMENTS. (a) A  
5           person who builds new residential construction described by Section  
6           233.153 shall have the construction inspected to ensure building  
7           code compliance in accordance with this section as follows:

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

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

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

16                           (C) on completion of construction of the  
17                           residence;

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

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

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

27                                   (i) a licensed engineer;

- 1                                    (ii) a registered architect;
- 2                                    (iii) a professional inspector licensed by
- 3 the Texas Real Estate Commission;
- 4                                    (iv) a plumbing inspector employed by a
- 5 municipality and licensed by the Texas State Board of Plumbing
- 6 Examiners;
- 7                                    (v) a building inspector employed by a
- 8 political subdivision; or
- 9                                    (vi) an individual certified as a
- 10 residential combination inspector by the International Code
- 11 Council; and

12                                    (B) may use the same inspector for all the

13 required inspections or a different inspector for each required

14 inspection.

15                                    (b) If required by a county to which this subchapter

16 applies, before commencing new residential construction, the

17 builder shall provide notice to the county on a form prescribed by

18 the county of:

- 19                                    (1) the location of the new residential construction;
- 20                                    (2) the approximate date by which the new residential
- 21 construction will be commenced; and

22                                    (3) the version of the International Residential Code

23 that will be used to construct the new residential construction

24 before commencing construction.

25                                    (c) If required by the county, not later than the 10th day

26 after the date of the final inspection under this section, the

27 builder shall submit notice of the inspection stating whether or

1 not the inspection showed compliance with the building code  
2 standards applicable to that phase of construction in a form  
3 required by the county to:

4 (1) the county employee, department, or agency  
5 designated by the commissioners court of the county to receive the  
6 information; and

7 (2) the person for whom the new residential  
8 construction is being built, if different from the builder.

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

12 (1) refer the inspector to the appropriate regulatory  
13 authority for discipline;

14 (2) in a suit brought by the appropriate attorney  
15 representing the county in the district court, obtain appropriate  
16 injunctive relief to prevent a violation or threatened violation of  
17 a standard or notice required under this subchapter from continuing  
18 or occurring;

19 (3) refer the builder for prosecution under Section  
20 233.157.

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

24 Sec. 233.157. PENALTY. (a) A person commits an offense if  
25 the person fails to provide proper notice in accordance with  
26 Sections 233.154(b) and (c).

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

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

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

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

9           SECTION 2. This Act takes effect immediately if it receives  
10 a vote of two-thirds of all the members elected to each house, as  
11 provided by Section 39, Article III, Texas Constitution. If this  
12 Act does not receive the vote necessary for immediate effect, this  
13 Act takes effect September 1, 2009.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 2833 was passed by the House on April 30, 2009, by the following vote: Yeas 144, Nays 0, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 2833 on May 29, 2009, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2833 on May 31, 2009, by the following vote: Yeas 72, Nays 71, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 2833 was passed by the Senate, with amendments, on May 27, 2009, by the following vote: Yeas 29, Nays

1; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2833 on May 31, 2009, by the following vote: Yeas 28, Nays 2.

\_\_\_\_\_  
Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

\_\_\_\_\_  
Governor