



GOVERNOR GREG ABBOTT

To: Debra Dockery, Chair
Julie Hildebrand, Executive Director
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Texas Board of Architectural Examiners

From: Erin Bennett, Director
Regulatory Compliance Division, Office of the Governor

Date: June 16, 2021

Subject: Title 22 Texas Administrative Code Sections 1.211, 1.212, and 1.213 (RCD Rule Review #2021-006)

I. Syllabus

The Texas Board of Architectural Examiners (“board”) filed an intent to review 22 TAC Chapter 1 pursuant to Section 2001.039, Texas Government Code.¹ The board submitted 22 TAC §§1.211, 1.212, and 1.213, which provide detail about the private and public building projects that must be performed by registered architects and those which non-registered individuals may perform, to the Regulatory Compliance Division (“division”) for review on March 26, 2021.² The division invited public comments on the rules for a 30-day period ending April 28, 2021, but received no comments. The division has determined that §§1.211, 1.212, and 1.213 reasonably define the parameters of statutory provisions, and, thus, the rules are approved for readoption.

II. Analysis

Section 1051.701, Texas Occupations Code, prohibits an individual from engaging in the practice of architecture unless registered with the board. Subchapter L, Chapter 1051, lists numerous exemptions to that requirement, including for licensed engineers and employees of architects and engineers. Sections 1.211, 1.212, and 1.213 address the general applicability of the registration requirement to private and public building projects as well as the scope of exemptions to registration for certain categories of those projects. Because the rules limit when and to what extent non-registered individuals may provide architectural services, and therefore

¹ 46 Tex. Reg. 2049 (2021) (notice of intent to review 22 TAC chs. 1, 3, 5, and 7) (published Mar. 26, 2021) (Tex. Bd. Architectural Exam’rs.).

² Rule Submission Memorandum from the Texas Board of Architectural Examiners (Mar. 26, 2021), at 1, 5, and 10 (on file with the Regulatory Compliance Division of the Office of the Governor).

participate in the market, the rules affect competition pursuant to Section 57.105(d)(1), Texas Occupations Code.³

Section 1051.606(a)(4) exempts an individual from the requirement to register with the board if the individual does not represent his or herself as an architect or architectural designer and prepares the architectural plans or specifications for, or observes or supervises, the construction, enlargement, or alteration of certain *privately* owned buildings, including some multifamily dwellings, commercial buildings, and warehouses. The general requirement that such plans or specifications be prepared by a registered architect, absent an applicable exemption, is reiterated in §1.211(a). Additionally, Subsections (b), (c), and (d) define terms in Section 1051.606(a)(4) to clarify the scope of some of the statutory exemptions. In §1.211(b), “multifamily dwelling” from Section 1051.606(a)(4)(C) is defined consistently with “dwelling” in the International Building Code, and, because Section 1051.606(a)(4)(B) already addresses single- and dual-family dwellings, defining “multifamily” as containing more than two units is a reasonable interpretation by the board.⁴ Similarly, both §1.211(c) and (d) rely on commonly understood meanings to define “commercial building” and “warehouse that has limited public access” from Sections 1051.606(a)(4)(D) and (E).⁵ Because §1.211 relies on commonly understood meanings that are supported by industry standards to define the scope of exemptions to the registration requirement, the rule is consistent with state policy.

Similarly, §1.212 requires an individual to be a registered architect to prepare architectural plans or specifications for certain *publicly* owned buildings, pursuant to Section 1051.703(a), unless an exemption applies. Consistent with Section 1051.703(a)(2), §1.212(a) outlines the rule’s applicability to new public buildings used for education, assembly, or office occupancy with construction costs exceeding \$100,000. This subsection also includes definitions of those building types based on the classifications of buildings and structures in the International Building Code.⁶ Next, §1.212(b) addresses the requirement to use a registered architect for certain alterations and additions to publicly owned buildings that exceed \$50,000 in construction

³ *Id.* at 4, 8, and 12-13.

⁴ International Code Council, *International Building Code*, “Section 202: Definitions,” at “Dwelling” and “Dwelling Unit,” (International Code Council, Inc., 2021 ed.) <https://codes.iccsafe.org/content/IBC2021P1>; *and see* Section 214.211(3), Texas Local Government Code (defining “residential”). Currently, the 2003 edition of the International Building Code is the designated municipal commercial building code in Texas, pursuant to Section 214.216, Texas Local Government Code; on January 1, 2022, statute will update to apply the 2012 edition. Acts of 2021, 87th Leg., R.S., ch. __ (H.B. 738).

⁵ For “commercial,” *see* Section 214.211(5), Texas Local Government Code; *see also* Merriam-Webster.com, “Commercial,” <https://www.merriam-webster.com/dictionary/commercial> (last visited May 20, 2021). For “warehouse,” *see* Merriam-Webster.com, “Warehouse,” <https://www.merriam-webster.com/dictionary/warehouse> (last visited April 13, 2021); *and compare* International Code Council, *International Building Code*, “Section 309: Mercantile Group M,” at §309.1, with “Section 311: Storage Group S,” at §311.1, (International Code Council, Inc., 2021 ed.) <https://codes.iccsafe.org/content/IBC2021P1>.

⁶ Rule Submission Memorandum from the Texas Board of Architectural Examiners (Mar. 26, 2021), at 7-8; International Code Council, *International Building Code*, “Section 303: Assembly Group A,” at §303.1; “Section 304: Business Group B,” at §304.1; and “Section 305: Educational Group E,” at §305.1, (International Code Council, Inc., 2003 ed.) <https://codes.iccsafe.org/content/IBC2003>.

costs, pursuant to Section 1051.703(a)(3). But, §1.212(c) acknowledges that certain architectural plans and specifications may be prepared by licensed engineers, in addition to architects, as defined in board rule and consistent with Section 1051.0016(b). And, §1.212(d) clarifies that designation as a prime design professional does not affect the scope of practice of an engineer or architect, reiterating Section 1051.703(b). These provisions appropriately reflect statutory requirements for a registered architect to perform certain services with respect to publicly owned buildings, unless exempted, and use industry standards to define the extent of those requirements. Thus, §1.212 is consistent with state policy.

Finally, §1.213 defines two terms found in Section 1051.606, which exempts certain activities from regulation under the chapter. Section 1051.606(a)(3) qualifies an exemption for a building alteration if it involves a substantial structural or exitway change. Section 1.213(a) defines a structural change as “substantial” if a licensed engineer is required to prepare the engineering plans and specifications pursuant to Chapter 1001, Texas Occupations Code. Sections 1001.0031(c), 1001.053, and 1001.056 require licensed engineers to design structural systems for projects of greater costs and wider use than those for which a licensed engineer is not required; thus, it makes sense that these more complex projects also warrant having registered architects prepare any architectural plans and specifications or provide supervision as otherwise required. Finally, §1.213(b) defines an exitway change as “substantial” if it affects a means of egress intended to be used by more than 50 people, consistent with the approach taken in the International Building Code to trigger increased requirements for features like stairways, corridors, and exit passageways.⁷ As a result, the board would expect a registered architect to prepare such a plan or specification. These definitions are reasonable interpretations of statute and are supported by industry standards. Thus, §1.213 is consistent with state policy.

III. Determination

Based on the above analysis, 22 TAC §§1.211, 1.212, and 1.213 are approved by the division and may be readopted pursuant to Section 2001.039, Texas Government Code.

⁷ Rule Submission Memorandum from the Texas Board of Architectural Examiners (Mar. 26, 2021), at 12; International Code Council, *International Building Code*, “Chapter 10: Means of Egress,” at §§1009.1, 1016.2, and 1020.2, (International Code Council, Inc., 2003 ed.) <https://codes.iccsafe.org/content/IBC2003>.