



DATE: October 1, 2021
INTERPRETATION NO.: PM2021-0004
TITLE: Worker Protection Standards – Applicability
RELATED DEPT. & DIVISION: Development Services Department
TOPIC: Specialized Certifications
DECISION MAKER: Beth M. Culver, AIA, CBO, Building Official

SUMMARY: This memo specifies review procedures, criteria, and exemptions applicable to projects for which certification under City Code § 4-18-2 (*Worker Protection Certification*) is required by City Code or other council-approved ordinance.

CODE SECTIONS: Austin City Code – Title 4 (*Business Regulation and Permit Requirements*)

- [§ 4-18-1](#) (*Expedited Building Plan Review*)
- [§ 4-18-2](#) (*Work Protection Certification*)

POLICY:

Background

City Code § 4-18-2 (*Worker Protection Certification*) establishes certification requirements that apply if, and only if, a project is required to be certified by another provision of City Code or other council-approved ordinance. Currently, certification is only required for projects utilizing expedited plan review process under City Code § 4-18-1 (*Expedited Plan Review*). For reference, both sections are copied below under “Relevant Code Sections.”

Special Review Procedures

The procedures described below are intended to aid reviewers and applicants in determining whether a project is subject to the certification requirements in City Code § 4-18-2 (*Worker Protection Certification*) and, if certification is required, to provide guidance on the applicable requirements.

1. *Is a project required to be certified under City Code § 4-18-2 (Worker Protection Certification)?*

Compliance with City Code § 4-18-2 (*Worker Protection Certification*) is not required unless a project is utilizing expedited building plan review for commercial projects or is specifically required to provide certification by another provision of City Code or council-approved ordinance.¹ Additionally, there are several criteria and exemptions that further limit the type of development for which certification is required.

The following guidelines define the conditions in which certification is required:

- a. If a project is utilizing expedited building plan review under City Code § 4-18-1 (*Expedited Plan Review*), then certification is required if:
 - i. The project is associated with a site plan or building permit application that was submitted on or after March 13, 2017, which is the effective date of the ordinance adopting the worker protection certification requirements; and
 - ii. Consistent with City Code § 4-18-1(B)(3), the project is:
 - (a) Commercial and includes no residential uses, as further defined in Paragraph 2, below;
 - (b) Over 75,000 square feet or exceeds \$7,500,000 in construction value, as further defined in Paragraph 3, below; and
 - (c) Submitted by an applicant other than a nonprofit organization that is tax exempt under 26 U.S.C. § 501(c)(3) and operates within the planning jurisdiction.
- b. If a project is not utilizing expedited review under City Code § 4-18-1 (*Expedited Plan Review*), then certification is only required if:
 - i. Compliance is specifically required by another provision of City Code or a separately council-approved ordinance; and
 - ii. The project is associated with a site plan or building permit application submitted on or after the date that the certification requirement became effective.

¹ As of the date of this memo, only projects utilizing expedited building plan review are required to provide certification under City Code § 4-18-2 (*Worker Protection Certified*). However, in some cases, a special ordinance (such as Planned Unit Developments) or agreement may also require certification even if the project is not utilizing expedited building plan review.

2. What constitutes a “residential use” for purposes of City Code § 4-18-1(B)(3)(a), which limits the certification requirement to a project that is “commercial and includes no residential uses”?

- a. The following are treated as residential uses for purposes of the certification requirement:
 - *Multi-family residential*
 - *Apartments*
 - *Condominium residential*
 - *Duplex residential*
 - *Retirement housing*
 - *Single-family residential*
 - *Townhouse residential*
 - *Two-family residential*
 - Accessory dwelling unit or units, such as a casita, *accessory apartment*, garage apartment, or *guest house*
 - Institutional residences containing a dwelling unit or units such as assisted living, hospice center, *family home*, *group home class I*, *group home class II*, *residential treatment*, or long-stay care facilities.
- b. The following uses are not treated as residential for purposes of the certification requirement:
 - *Group residential*
 - *Timeshares*
 - *Hotel-motel*
 - *Bed and breakfast residential*
 - *Cooperative housing*
 - *Residence halls*
 - *Fraternity or sorority houses*
 - *Dormitories*
 - Similar structures to those above.

3. How is square footage and valuation determined for purposes of City Code § 4-18-1(B)(3)(b), which limits the certification requirement to projects that are “over 75,000 square feet or exceeds \$7,500,000 in construction value[?]”

Only count commercial uses and related improvements in determining whether a project exceeds 75,000 square feet or \$7,500,000 in construction value.

4. If a project is required to provide a certification under City Code § 4-18-2 (Worker Protection Certification), what documents are required to meet the certification requirement?

Certifications are provided by third parties and must be provided “on a form approved by the accountable official.” Please consult with the Building Official or Development Officer for additional information on certification requirements.

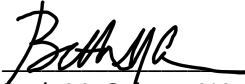
Relevant Code Sections**§ 4-18-1 EXPEDITED BUILDING PLAN REVIEW.**

- (A) The director of the Development Services Department may adopt requirements for providing expedited plan review for building permits, site plans, or other applications required under Title 25 (*Land Development*).
- (B) Requirements for expedited building plan review adopted under this section must, at a minimum:
 - (1) Consolidate different disciplines of plan review required for approval of an application; and
 - (2) Provide for expedited turnaround time for plan review comments on an application and on subsequent updates submitted by the applicant; and
 - (3) Require certification under Section 4-18-2 (*Worker Protection Certification*) if the project is:
 - (a) Commercial and includes no residential uses;
 - (b) Over 75,000 square feet or exceeds \$7,500,000 in construction value; and
 - (c) Submitted by an applicant other than a nonprofit organization that is tax exempt under 26 U.S.C. § 501(c)(3) and operates within the planning jurisdiction.
- (C) If a building permit is associated with a site plan under Chapter 25-5 (*Site Plan*), the total square footage and construction value of all nonresidential structures and improvements included in the site plan shall apply for purposes of reviewing an application for expedited review of the building permit application under Subsection (B)(3)(b).
- (D) In addition to submitting a complete permit application and providing such other information as may be required by the director, an applicant for expedited building plan review must pay an enhanced fee established by separate ordinance.

§ 4-18-2 Worker Protection Certification.

- (A) This section establishes provisions for certifying that development projects will meet specified worker protection standards. Compliance with this section is required only if specifically provided elsewhere in this Title or by separate ordinance.
- (B) If a project is required to be certified under this section, the accountable official may accept a permit application for review only if the application includes a third-party certification requiring that construction:
 - (1) Comply with the "Better Builder" program, as the program existed on February 2, 2017; or
 - (2) A similar program, if approved by ordinance, that establishes comparable requirements for:
 - (a) Payment of a living wage;
 - (b) Completion of OSHA-10 training;
 - (c) Workers compensation;
 - (d) Hiring goals from local craft training programs;

- (e) Compliance with all applicable state, federal, and local laws; and
 - (f) Independent on-site monitoring.
- (C) A third-party certification required under this section must be on a form approved by the accountable official.



Beth M. Culver, AIA, CBO, Building Official

Historical Note: *This policy memo updates the original version of Policy Memo No. 2019-0001 to improve readability and provide additional context.*