

**CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Planning and Inspections Department, Planning Division

AGENDA DATE: Introduction: February 20, 2018
Public Hearing: March 20, 2018

CONTACT PERSON/PHONE: Victor Morrison-Vega, (915) 212-1553, morrison-vegavx@elpasotexas.gov
Alex Hoffman, (915) 212-1566, hoffmanap@elpasotexas.gov

DISTRICT(S) AFFECTED: All

SUBJECT:

An Ordinance amending Title 20 (Zoning), Chapter 20.22 (Nonconforming Situations), amending Section 20.22.080 Property affected by right-of-way acquisition to allow for properties affected by right-of-way acquisitions to be exempt from certain zoning regulations and to register as legal nonconforming. The penalty is as provided for in Chapter 20.04 of the El Paso City Code. (All Districts)

BACKGROUND / DISCUSSION:

On February 8, 2018, the CPC reviewed and recommended approval of the proposed code amendment.

PRIOR COUNCIL ACTION:

There is no prior City Council action on this proposed code amendment.

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

City Plan Commission (CPC) – Approval Recommendation (6-0, 1 not present for the vote, (unanimous)).

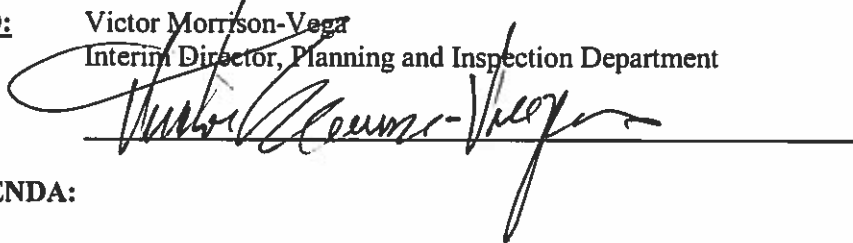
*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) N/A

FINANCE: (if required) N/A

DEPARTMENT HEAD:

Victor Morrison-Vega
Interim Director, Planning and Inspection Department



APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

FLOOR AMENDMENT

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 20 (ZONING), CHAPTER 20.22 (NONCONFORMING SITUATIONS), AMENDING SECTION 20.22.080 PROPERTY AFFECTED BY RIGHT-OF-WAY ACQUISITION TO ALLOW FOR PROPERTIES AFFECTED BY RIGHT-OF-WAY ACQUISITIONS TO BE EXEMPT FROM CERTAIN ZONING REGULATIONS AND TO REGISTER AS LEGAL NONCONFORMING. THE PENALTY IS AS PROVIDED FOR IN CHAPTER 20.04 OF THE EL PASO CITY CODE.

WHEREAS, Title 20 (Zoning) of the El Paso City Code was adopted to promote the health, safety, morals and general welfare of the community; and

WHEREAS, Title 20 (Zoning) sets minimum density and dimensional standards with which all properties located within the City must comply; and

WHEREAS, in instances where properties are affected by right-of-way acquisition, said properties may not meet all density, dimensional, or on-premises sign standards after acquisition; and

WHEREAS, the City wishes to provide a relief mechanism for property owners from complying with all density, dimensional, and on-premises sign standards when their properties are affected by right-of-way acquisition; and

WHEREAS, a public hearing was held and recommended for approval by the City Plan Commission;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

SECTION 1. That Title 20 (Zoning), Chapter 20.22 (Nonconforming Situations), Section 20.22.080 (Property affected by right-of-way acquisition) be deleted and replaced in its entirety and amended as follows:

20.22.080 - Property affected by right-of-way acquisition.

A) Definitions.

(1) *Governmental agency.* United States of America, State of Texas, County of El Paso, City of El Paso, or any other agency having jurisdiction within the City of El Paso limits, with the ability to exercise eminent domain powers.

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KMN

FLOOR AMENDMENT

(2) *Right-of-way acquisition.* The securing of right-of-way through negotiation, purchase, bargain, trade, donation, condemnation or other means, but not including the dedication of right-of-way through the platting or zoning processes.

(B) In the event that a right-of-way acquisition by a governmental agency causes a property or the improvements thereon to be in violation of Appendix B (Table of Density and Dimensional Standards) and Appendix C (Table of Parking Requirements and Standards) of Title 20 (Zoning) and/or Chapter 18.46 (Landscape), said property shall be exempt from said provisions to the extent said violation is caused by the right-of-way acquisition and shall be eligible for registration as a legal nonconformity, subject to the following:

(1) Property which undergoes a zoning change initiated by the property owner subsequent to right-of-way acquisition shall no longer be subject to this exemption and shall instead have a nonconforming status to the extent that any nonconformance with city ordinances resulted from a right-of-way acquisition by a governmental agency prior to the rezoning and shall therefore be treated as a nonconforming use pursuant to the provisions of this chapter rather than exempt as provided above. However, a city-initiated rezoning shall not cause a property to lose the exemption provided by this section for properties affected by right-of-way acquisitions.

(2) Nothing provided in this provision shall be construed to permit any obstruction which may create a traffic safety hazard or any other safety hazard.

(3) Improvements required by special permit or zoning condition and located in the area acquired for right-of-way shall no longer apply subsequent to the acquisition, except that required screening per Section 20.16 (Screening and Fencing) originally located within the area of the acquired property shall be relocated to the remainder of the tract as close as practicable inside the new property line.

(4) Any alteration resulting in an ~~or~~ increase in building square footage to the registered legal ~~nonconforming nonconformity building~~ shall require that the increased square footage area of the building comply with all applicable provisions in Title 20 (Zoning) and Chapter 18.46 (Landscape).

(C) In the event that a right-of-way acquisition by a governmental agency causes an On-Premises Sign to be in violation of Chapter 20.18, Article IV (On-Premises Sign Regulations), said sign shall be exempt from said provisions to the extent said violation is caused by the right-of-way acquisition, subject to the following:

(1) The sign must have been legally permitted at the time of the initial placement; and

(2) Must be relocated to the remainder or remain in its existing location; and

(3) Cannot be altered or enlarged; and

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(4) Must be registered as legal nonconforming and be subject to the provisions of Section 20.22.090 (Nonconforming Signs).

(D) The provisions of Section 20.22.040 B are not applicable to properties that register legal nonconforming under these provisions.

SECTION 2. Except as herein amended, Title 20 (Zoning) of the El Paso City Code shall remain full force and effect.

ADOPTED this ____ day of _____, 2018.

THE CITY OF EL PASO

Dee Margo, Mayor

ATTEST:

Laura D. Prine, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Karla M. Nieman
Senior Assistant City Attorney

Victor Morrison-Vega, Interim Director
Planning & Inspections Department

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MEMORANDUM

DATE: February 13, 2018

TO: The Honorable Mayor and City Council
Tommy Gonzalez, City Manager

FROM: Alex Hoffman, Deputy Director

SUBJECT: Ordinance to amend Title 20 (Zoning) Chapter 20.22 (Nonconforming Situations), Section 20.22.080 Property affected by right-of-way acquisition

The City Plan Commission (CPC), on February 8, 2018, voted unanimously to recommend **approval** of the proposed code amendment.

The Planning Division has received no communication in support or opposition to the proposed amendment.

Applicant: City of El Paso

Attachments:
Proposed Ordinance

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 20 (ZONING), CHAPTER 20.22 (NONCONFORMING SITUATIONS), AMENDING SECTION 20.22.080 PROPERTY AFFECTED BY RIGHT-OF-WAY ACQUISITION TO ALLOW FOR PROPERTIES AFFECTED BY RIGHT-OF-WAY ACQUISITIONS TO BE EXEMPT FROM CERTAIN ZONING REGULATIONS AND TO REGISTER AS LEGAL NONCONFORMING. THE PENALTY IS AS PROVIDED FOR IN CHAPTER 20.04 OF THE EL PASO CITY CODE.

WHEREAS, Title 20 (Zoning) of the El Paso City Code was adopted to promote the health, safety, morals and general welfare of the community; and

WHEREAS, Title 20 (Zoning) sets minimum density and dimensional standards with which all properties located within the City must comply; and

WHEREAS, in instances where properties are affected by right-of-way acquisition, said properties may not meet all density, dimensional, or on-premises sign standards after acquisition; and

WHEREAS, the City wishes to provide a relief mechanism for property owners from complying with all density, dimensional, and on-premises sign standards when their properties are affected by right-of-way acquisition; and

WHEREAS, a public hearing was held and recommended for approval by the City Plan Commission;

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SECTION 2. Except as herein amended, Title 20 (Zoning) of the El Paso City Code shall remain full force and effect.

ADOPTED this _____ day of _____, 2018.

THE CITY OF EL PASO

Dee Margo, Mayor

ATTEST:

Laura D. Prine, Interim City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Karla M. Nieman
Senior Assistant City Attorney

Victor Morrison-Vega, Interim Director
Planning & Inspections Department

ORDINANCE NO. _____

13-1007-825 | 751390_2

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KMN



Recommendation/Public Input

- **Planning Division recommendation:** Approval
- **CPC vote:** Approval (unanimous)
- **Public Input:** N/A

*Strategic Goal #3 Promote the Visual Image of
El Paso*



Floor Amendment

20.22.080(B)

(4) Any alteration **resulting in an** increase in **building** square footage to the registered legal **nonconformity** **shall require that the increased square footage area of the building** comply with all applicable provisions in Title 20 (Zoning) and Chapter 18.46 (Landscape).



Title 20 (Zoning) Ordinance Amendment

20.22.080 Property affected by right-of-way acquisition.

Overview of amendment:

- Simplifies standards for properties affected by ROW acquisition;
- Clarifies what can be registered as legal nonconforming; and
- Expands eligible zoning standards which can be registered legal nonconforming as a result of ROW acquisition.



Proposed Amendment

- Deletes and replaces existing provisions in their entirety.
- Exempts any property affected by ROW acquisition from complying with:
 - Appendix B (Density and Dimensional Standards)
 - Appendix C (Parking Requirements)
 - Chapter 18.46 (Landscape)
 - Section 20.22.040.B. (Abandonment and Termination of Nonconforming Structure)
- Provides relief mechanisms for signage affected by ROW acquisition.



Existing Code Provisions

20.22.080 - Property affected by right-of-way acquisition.

- A. Relocation of Existing Uses. Zoning restrictions as to lot area, yards or setbacks may be reduced as applied to a structure that is to be relocated on any lot a portion of which was acquired under the threat of condemnation or in an eminent domain action; provided, that the following requirements are met:
1. The gross floor area of the new building or structure is no greater than that of the previously existing building or structure;
 2. The new building or structure is used only for the previously nonconforming use or for a use permitted in the zoning district; and
 3. Yard and Setback Requirements.
 - a. For commercial and manufacturing uses, the minimum yard standards are met for the most restrictive district in which the use is permitted,
 - b. For residential uses, three-fifths of the yard standards are met for the district in which the use is permitted,
 - c. For any use, the setback requirements provided in any zoning district or imposed as a condition of a zoning change may be waived provided that the setback requirements of this subsection are met;
 4. If on-site parking was provided for the nonconforming use prior to the acquisition of right-of-way, a minimum of eighty-five percent of the number of spaces existing prior to the acquisition of right-of-way shall be provided for the new building or structure.
- B. Relocation of Existing Nonconforming Use. A structure whose use is deemed nonconforming, may be relocated to another portion of the site on which that structure is located; provided, that the use is registered and verified by the zoning administrator that the use of property preexisted any zoning restrictions as to use, and that the requirements of subsection A of this section have been satisfied.
- C. The denial of a building permit under this section shall not be construed to affect an applicant's right to request a special exception from or an appeal to the zoning board of adjustment pursuant to Chapter 2.16 of this Code.



Existing Code Provisions Overview

- Allows legal nonconforming only for setbacks and parking
 - Requires 3/5 of the dimensional standards in residential and the minimum required setbacks in commercial and manufacturing
 - Still requires 85% of required parking
- All other dimensional standards must be met even if property is taken.