

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

**DEPARTMENT:** Planning and Inspections, Planning Division

**AGENDA DATE:** Introduction – August 6, 2019

**PUBLIC HEARING DATE:** September 3, 2019

**CONTACT PERSON NAME AND PHONE NUMBER:**

Philip Etiwe, (915) 212-1553, [EtiwePF@elpasotexas.gov](mailto:EtiwePF@elpasotexas.gov)

Anne Guayante, (915) 212-1814, [Guayanteam@elpasotexas.gov](mailto:Guayanteam@elpasotexas.gov)

**DISTRICT(S) AFFECTED:** Citywide

**STRATEGIC GOAL:** #3 Promote the Visual Image of El Paso

**SUBGOAL:** 3.1 Provide business friendly permitting and inspection processes  
3.2 Improve the visual impression of the community

**SUBJECT:**

An ordinance amending Title 20 (Zoning), Chapter 20.10 (Supplemental Use Regulations), Section 20.06.035 (Accessory Dwelling Unit (ADU)), Subsection 20.10.035(A), Subsection 20.10.035(A)(12) of the El Paso City Code to comply with changes made by the Texas Legislature during the 86<sup>th</sup> legislative session under H.B. 2439 regarding regulations adopted by governmental entities for building products, materials, or methods used in the construction or renovation of residential or commercial buildings. The penalty is as provided under Chapter 20.24 of the El Paso City Code. (Citywide)

**BACKGROUND / DISCUSSION:**

On July 25, 2019, the City Plan Commission reviewed and recommended approval of the proposed amendments.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A

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\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**

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Philip F. Etiwe, Director  
Planning and Inspections Department

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING TITLE 20 (ZONING) CHAPTER 20.10 (SUPPLEMENTAL USE REGULATIONS), SECTION 20.10.035 (ACCESSORY DWELLING UNIT (ADU)), SUBSECTION 20.10.035(A), SUBSUBSECTION 20.10.035(A)(12) OF THE EL PASO CITY CODE TO COMPLY WITH CHANGES MADE BY THE TEXAS LEGISLATURE DURING THE 86<sup>TH</sup> LEGISLATIVE SESSION UNDER H.B. 2439 REGARDING REGULATIONS ADOPTED BY GOVERNMENTAL ENTITIES FOR BUILDING PRODUCTS, MATERIALS, OR METHODS USED IN THE CONSTRUCTION OR RENOVATION OF RESIDENTIAL OR COMMERCIAL BUILDINGS. THE PENALTY IS AS PROVIDED UNDER CHAPTER 20.24 OF THE EL PASO CITY CODE.

WHEREAS, the City Plan Commission on July 25, 2019 recommended approval of the amendments.

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

**SECTION 1.** That Title 20 (Zoning), Chapter 20.10 (Supplemental Use Regulations), Section 20.10.035 (Accessory Dwelling Unit), Subsection 20.10.035(A), Subsubsection 20.10.035(A)(12) is amended to read as follows:

12. ADUs shall resemble the principal unit in scale and character.

**SECTION 2.** Except as herein amended Title 20 remains in full force and effect.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

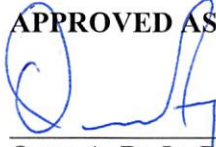
THE CITY OF EL PASO:

ATTEST:

\_\_\_\_\_  
Dee Margo, Mayor

\_\_\_\_\_  
Laura D. Prine, City Clerk

APPROVED AS FORM:

  
\_\_\_\_\_  
Omar A. De La Rosa  
Assistant City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Philip F. Etiwe, Director  
Planning & Inspections Department

ORDINANCE NO. \_\_\_\_\_

19-1007-2471 | 909968

Title 20 Amendment-Supplemental Use Regulations Accessory Structures

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## **MEMORANDUM**

**DATE:** July 30, 2019

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

**FROM:** Raul Garcia, Planning Program Manager

**SUBJECT:** Amendments to Title 20.10

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The City Plan Commission (CPC), on July 25, 2019 voted 6-0 to recommend **approval** of the amendments. The CPC found that the amendments are in conformance with Plan El Paso. The CPC also determined that the amendments protect the best interest, health, safety and welfare of the public in general; and, that the amendments will have no negative effects on the natural environment, social economic conditions, and property values in the vicinity and the city as a whole.

The Planning Division has not received any letters or phone calls in support or opposition of the amendments.

### **20.10.035 (Accessory Dwelling Unit)**

A. In addition to the regulations in Section 20.10.030, detached accessory dwelling units in residential zoning districts shall comply with the following:

12. ADUs shall resemble the principal unit in scale, ~~material and color. Roof pitch, siding material and color shall match the principal unit.~~

12. ADUs shall resemble the principal unit in scale and character.

AN ACT

relating to certain regulations adopted by governmental entities for the building products, materials, or methods used in the construction or renovation of residential or commercial buildings.

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

SECTION 1. Title 10, Government Code, is amended by adding Subtitle Z to read as follows:

SUBTITLE Z. MISCELLANEOUS PROVISIONS PROHIBITING CERTAIN

GOVERNMENTAL ACTIONS

CHAPTER 3000. GOVERNMENTAL ACTION AFFECTING RESIDENTIAL AND

COMMERCIAL CONSTRUCTION

Sec. 3000.001. DEFINITIONS. In this chapter:

(1) "National model code" has the meaning assigned by Section 214.217, Local Government Code.

(2) "Governmental entity" has the meaning assigned by Section 2007.002.

Sec. 3000.002. CERTAIN REGULATIONS REGARDING BUILDING PRODUCTS, MATERIALS, OR METHODS PROHIBITED. (a) Notwithstanding any other law and except as provided by Subsection (d), a governmental entity may not adopt or enforce a rule, charter provision, ordinance, order, building code, or other regulation that:

(1) prohibits or limits, directly or indirectly, the use or installation of a building product or material in the

1 construction, renovation, maintenance, or other alteration of a  
2 residential or commercial building if the building product or  
3 material is approved for use by a national model code published  
4 within the last three code cycles that applies to the construction,  
5 renovation, maintenance, or other alteration of the building; or

6 (2) establishes a standard for a building product,  
7 material, or aesthetic method in construction, renovation,  
8 maintenance, or other alteration of a residential or commercial  
9 building if the standard is more stringent than a standard for the  
10 product, material, or aesthetic method under a national model code  
11 published within the last three code cycles that applies to the  
12 construction, renovation, maintenance, or other alteration of the  
13 building.

14 (b) A governmental entity that adopts a building code  
15 governing the construction, renovation, maintenance, or other  
16 alteration of a residential or commercial building may amend a  
17 provision of the building code to conform to local concerns if the  
18 amendment does not conflict with Subsection (a).

19 (c) This section does not apply to:

20 (1) a program established by a state agency that  
21 requires particular standards, incentives, or financing  
22 arrangements in order to comply with requirements of a state or  
23 federal funding source or housing program;

24 (2) a requirement for a building necessary to consider  
25 the building eligible for windstorm and hail insurance coverage  
26 under Chapter 2210, Insurance Code;

27 (3) an ordinance or other regulation that regulates

outdoor lighting that is adopted for the purpose of reducing light pollution and that:

(A) is adopted by a governmental entity that is certified as a Dark Sky Community by the International Dark-Sky Association as part of the International Dark Sky Places Program; or

(B) applies to outdoor lighting within five miles of the boundary of a military base in which an active training program is conducted;

(4) an ordinance or order that:

(A) regulates outdoor lighting; and

(B) is adopted under Subchapter B, Chapter 229, Local Government Code, or Subchapter B, Chapter 240, Local Government Code;

(5) a building located in a place or area designated for its historical, cultural, or architectural importance and significance that a municipality may regulate under Section 211.003(b), Local Government Code, if the municipality:

(A) is a certified local government under the National Historic Preservation Act (54 U.S.C. Section 300101 et seq.); or

(B) has an applicable landmark ordinance that meets the requirements under the certified local government program as determined by the Texas Historical Commission;

(6) a building located in a place or area designated for its historical, cultural, or architectural importance and significance by a governmental entity, if designated before April

1, 2019;

(7) a building located in an area designated as a historic district on the National Register of Historic Places;

(8) a building designated as a Recorded Texas Historic Landmark;

(9) a building designated as a State Archeological Landmark or State Antiquities Landmark;

(10) a building listed on the National Register of Historic Places or designated as a landmark by a governmental entity;

(11) a building located in a World Heritage Buffer Zone; and

(12) a building located in an area designated for development, restoration, or preservation in a main street city under the main street program established under Section [442.014](#).

(d) A municipality that is not a municipality described by Subsection (c)(5)(A) or (B) may adopt or enforce a regulation described by Subsection (a) that applies to a building located in a place or area designated on or after April 1, 2019, by the municipality for its historical, cultural, or architectural importance and significance, if the municipality has the voluntary consent from the building owner.

(e) A rule, charter provision, ordinance, order, building code, or other regulation adopted by a governmental entity that conflicts with this section is void.

Sec. 3000.003. INJUNCTION. (a) The attorney general or an aggrieved party may file an action in district court to enjoin a



1 violation or threatened violation of Section 3000.002.

2 (b) The court may grant appropriate relief.

3 (c) The attorney general may recover reasonable attorney's  
4 fees and costs incurred in bringing an action under this section.

5 (d) Sovereign and governmental immunity to suit is waived  
6 and abolished only to the extent necessary to enforce this chapter.

7 Sec. 3000.004. OTHER PROVISIONS NOT AFFECTED. This chapter  
8 does not affect provisions regarding the installation of a fire  
9 sprinkler protection system under Section 1301.551(i), Occupations  
10 Code, or Section 775.045(a)(1), Health and Safety Code.

11 Sec. 3000.005. SEVERABILITY. If any provision of a rule,  
12 charter provision, ordinance, order, building code, or other  
13 regulation described by Section 3000.002(a) is held invalid under  
14 this chapter, the invalidity does not affect other provisions or  
15 applications of the rule, charter provision, ordinance, order,  
16 building code, or other regulation that can be given effect without  
17 the invalid provision or application, and to this end the  
18 provisions of the rule, charter provision, ordinance, order,  
19 building code, or other regulation are severable.

20 SECTION 2. This Act takes effect September 1, 2019.

H.B. No. 2439

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President of the Senate

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Speaker of the House

I certify that H.B. No. 2439 was passed by the House on April 30, 2019, by the following vote: Yeas 124, Nays 21, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2439 on May 23, 2019, by the following vote: Yeas 133, Nays 9, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 2439 was passed by the Senate, with amendments, on May 19, 2019, by the following vote: Yeas 26, Nays 5.

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Secretary of the Senate

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

Date

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Governor