

**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 2 (ADMINISTRATION AND PERSONNEL), CHAPTER 2.16 (ZONING BOARD OF ADJUSTMENT), SECTION 2.16.040 (APPEALS), AND SECTION 2.16.050 (SPECIAL EXCEPTIONS), TO COMPLY WITH CHANGES ENACTED BY THE TEXAS LEGISLATURE DURING THE 86TH LEGISLATIVE SESSION UNDER H.B. 2497 AND H.B. 2439 REGARDING APPEALS TO THE ZONING BOARD OF ADJUSTMENT AND REGULATIONS PERTAINING TO THE USE OF BUILDING MATERIALS USED IN THE CONSTRUCTION OR RENOVATION OF RESIDENTIAL OR COMMERCIAL BUILDINGS. THE PENALTY BEING PROVIDED IN CHAPTER 20.24 (ENFORCEMENT-PENALTY) OF THE EL PASO CITY CODE.

**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

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

**DEPARTMENT HEAD:**

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Philip F. Etiwe, Director  
Planning and Inspections Department

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

**AN ORDINANCE AMENDING TITLE 2 (ADMINISTRATION AND PERSONNEL), CHAPTER 2.16 (ZONING BOARD OF ADJUSTMENT), SECTION 2.16.040 (APPEALS), AND SECTION 2.16.050 (SPECIAL EXCEPTIONS), TO COMPLY WITH CHANGES ENACTED BY THE TEXAS LEGISLATURE DURING THE 86<sup>TH</sup> LEGISLATIVE SESSION UNDER H.B. 2497 AND H.B. 2439 REGARDING APPEALS TO THE ZONING BOARD OF ADJUSTMENT AND REGULATIONS PERTAINING TO THE USE OF BUILDING MATERIALS USED IN THE CONSTRUCTION OR RENOVATION OF RESIDENTIAL OR COMMERCIAL BUILDINGS. THE PENALTY BEING PROVIDED IN CHAPTER 20.24 (ENFORCEMENT-PENALTY) OF THE EL PASO CITY CODE.**

**WHEREAS,** The 86th Texas Legislature recently enacted H.B. 2497 and H.B. 2439 requiring the City to update Sections 2.16.040 and 2.16.050 of the El Paso City Code; and,

**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 2 (Administration and Personnel), Chapter 2.16 (Zoning Board of Adjustment), Section 2.16.040 (Appeals) is amended in its entirety and replaced by the following section:

**2.16.040 (Appeals)**

- A. The board is empowered to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of Title 20. In exercising these powers the board may, in conformity with the state act and this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.
- B. The following persons may appeal to the board a decision made by an administrative official that is not related to a specific application, address, or project:
  - 1. a person aggrieved by a decision; or
  - 2. any officer or department of the City affected by the decision.
- C. The following persons may appeal to the board a decision made by an administrative official that is related to a specific application, address, or project:
  - 1. A person who filed the application that is the subject of the decision;
  - 2. A person who is the owner, or representative of the owner, of the property that is the

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

- subject of the decision;
  - 3. A person who is aggrieved by the decision and is the owner of real property within 200 feet of the property that is the subject of the decision; or
  - 4. Any officer or department of the City that is affected by the decision.
- D. A person allowed to appeal to the board under this section must do the following in order to appeal a decision to the board:
- 1. The appellant must file with the board and the official from whom the appeal is taken a notice of appeal specifying the grounds for the appeal.
  - 2. The appeal must be filed not later than the 20th day after the decision is made.
- E. The board shall decide the appeal at the next meeting for which notice can be provided and not later than the 60th day after the date the appeal is filed.

**SECTION 2.** That Title 2 (Administration and Personnel), Chapter 2.16 (Zoning Board of Adjustment), Section 2.16.050 (Special Exceptions), Subsection 2.16.050(J) (Carport over Driveway) Subsubsection (3), is amended and replaced by the following:

- 3. The carport shall resemble the main residential structure in scale and character and shall be open on three sides.

**SECTION 3.** Except as herein amended, Title 2 of the El Paso City Code shall remain in full force and effect.

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

**THE CITY OF EL PASO:**

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

**ATTEST:**

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

**APPROVED AS TO FORM:**

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

**APPROVED AS TO CONTENT:**

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

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

## 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 2**

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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.

## 2.16.040 - Appeals

~~The board is empowered to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of Title 20. In exercising these powers the board may, in conformity with the state act and this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.~~

- A. The board is empowered to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of [Title 20](#). In exercising these powers the board may, in conformity with the state act and this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.
- B. The following persons may appeal to the board a decision made by an administrative official that is not related to a specific applications, address, or project
  1. A person aggrieved by a decision; or
  2. Any officer or department of the City affected by the decision.
- C. The following persons may appeal to the board a decision made by an administrative official that is related to a specific application, address, or project:
  1. A person who file the application that is the subject of the decision;
  2. A person who is the owner, or representative of the owner, of the property that is the subject of the decision;
  3. A person who is aggrieved by the decision that is the owner of real property within 200 feet of the property that is the subject of the decision;
  4. Any officer or department of the City that is affected by the decision.
- D. A person allowed to appeal to the board under this section must do the following in order to appeal a decision to the board:
  1. The appellant must file with the board and the official from whom the appeal is taken a notice of appeal specifying the grounds for the appeal.
  2. The appeal must be filed not later than the 20<sup>th</sup> day after the decision is made.

E. The board shall decide the appeal at the next meeting for which notice can be provided and not later than the 60<sup>th</sup> day after the date the appeal is filed.

### **2.16.050 Special Exceptions**

J. Carport over a driveway. Permit the encroachment into the required front yard setback for a lot in a residential (R) district beyond other allowed modifications for a carport covering a driveway; provided, however, that:

~~3. The carport shall be constructed of the same material, architectural design, and color scheme as the residential structure, shall be open on three sides, shall be attached to the main structure and shall rise no higher than the highest point of the roof of the dwelling;~~

3. The carport shall resemble the main residential structure in scale and character and shall be open on three sides.

1 AN ACT

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

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

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

8 SUBTITLE Z. MISCELLANEOUS PROVISIONS PROHIBITING CERTAIN

9 GOVERNMENTAL ACTIONS

10 CHAPTER 3000. GOVERNMENTAL ACTION AFFECTING RESIDENTIAL AND

11 COMMERCIAL CONSTRUCTION

12 Sec. 3000.001. DEFINITIONS. In this chapter:

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

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

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

23 (1) prohibits or limits, directly or indirectly, the  
24 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

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

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

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

10 (4) an ordinance or order that:

11 (A) regulates outdoor lighting; and

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

15 (5) a building located in a place or area designated  
16 for its historical, cultural, or architectural importance and  
17 significance that a municipality may regulate under Section  
18 211.003(b), Local Government Code, if the municipality:

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

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

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

1 1, 2019;

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

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

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

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

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

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

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

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

26 Sec. 3000.003. INJUNCTION. (a) The attorney general or an  
27 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.

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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

## AN ACT

relating to rules of and appeals to a municipal board of adjustment.

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

SECTION 1. Section 211.008(e), Local Government Code, is amended to read as follows:

(e) The board by majority vote shall adopt rules in accordance with any ordinance adopted under this subchapter and with the approval of the governing body. Meetings of the board are held at the call of the presiding officer and at other times as determined by the board. The presiding officer or acting presiding officer may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public.

SECTION 2. Section 211.010, Local Government Code, is amended by amending Subsections (a), (b), and (d) and adding Subsection (a-1) to read as follows:

(a) Except as provided by Subsection (e), any of the following persons may appeal to the board of adjustment a decision made by an administrative official that is not related to a specific application, address, or project:

(1) a person aggrieved by the decision; or  
 (2) any officer, department, board, or bureau of the municipality affected by the decision.

(a-1) Except as provided by Subsection (e), any of the following persons may appeal to the board of adjustment a decision made by an administrative official that is related to a specific application, address, or project:

(1) a person who:  
(A) filed the application that is the subject of the decision;  
(B) is the owner or representative of the owner of the property that is the subject of the decision; or  
(C) is aggrieved by the decision and is the owner of real property within 200 feet of the property that is the subject of the decision; or  
(2) any officer, department, board, or bureau of the municipality affected by the decision.

(b) The appellant must file with the board and the official from whom the appeal is taken a notice of appeal specifying the grounds for the appeal. The appeal must be filed not later than the 20th day after the date the decision is made [~~within a reasonable time as determined by the rules of the board~~]. On receiving the notice, the official from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record of the action that is appealed.

(d) The board shall set a reasonable time for the appeal hearing and shall give public notice of the hearing and due notice to the parties in interest. A party may appear at the appeal hearing in person or by agent or attorney. The board shall decide the appeal at the next meeting for which notice can be provided following the hearing and not later than the 60th day after the date the appeal is filed [~~within a reasonable time~~].

SECTION 3. (a) Section 211.008(e), Local Government Code, as amended by this Act, applies only to rules adopted by a municipal board of adjustment on or after the effective date of this Act.

(b) Section 211.010(a), Local Government Code, as amended by this Act, applies only to an appeal based on a decision made by an administrative official on or after the effective date of this Act. An appeal based on a decision made by an administrative official

before the effective date of this Act is governed by the law in effect on the date the decision was made, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2019.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I certify that H.B. No. 2497 was passed by the House on May 8, 2019, by the following vote: Yeas 145, Nays 2, 1 present, not voting.

\_\_\_\_\_  
Chief Clerk of the House

I certify that H.B. No. 2497 was passed by the Senate on May 22, 2019, by the following vote: Yeas 31, Nays 0.

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

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

\_\_\_\_\_  
Governor