

**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

Raul Garcia, (915) 212-1643, Garcia1@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 21 (SMARTCODE), CHAPTER 21.50 (BUILDING SCALE PLANS), SECTION 21.50.140 (ARCHITECTURAL STANDARDS), AND CHAPTER 21.70 (DEFINITION OF TERMS), SECTION 21.70.010 (DEFINITIONS), TO COMPLY WITH CHANGES ENACTED BY THE TEXAS LEGISLATURE DURING THE 86TH LEGISLATIVE SESSION UNDER H.B. 2439 AND H.B. 3167 REGARDING REGULATIONS PERTAINING TO THE USE OF BUILDING MATERIALS USED IN THE CONSTRUCTION OR RENOVATION OF RESIDENTIAL OR COMMERCIAL BUILDINGS AND MUNICIPAL APPROVAL PROCEDURE FOR LAND DEVELOPMENT APPLICATIONS. THE PENALTY BEING AS PROVIDED IN SECTION 21.60 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:

Philip F. Etiwe, Director
Planning and Inspections Department

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 21 (SMARTCODE), CHAPTER 21.50 (BUILDING SCALE PLANS), SECTION 21.50.140 (ARCHITECTURAL STANDARDS), AND CHAPTER 21.70 (DEFINITION OF TERMS), SECTION 21.70.010 (DEFINITIONS), TO COMPLY WITH CHANGES ENACTED BY THE TEXAS LEGISLATURE DURING THE 86TH LEGISLATIVE SESSION UNDER H.B. 2439 AND H.B. 3167 REGARDING REGULATIONS PERTAINING TO THE USE OF BUILDING MATERIALS USED IN THE CONSTRUCTION OR RENOVATION OF RESIDENTIAL OR COMMERCIAL BUILDINGS AND MUNICIPAL APPROVAL PROCEDURE FOR LAND DEVELOPMENT APPLICATIONS. THE PENALTY BEING AS PROVIDED IN SECTION 21.60 OF THE EL PASO CITY CODE.

WHEREAS, The 86th Legislature recently enacted H.B. 2439 and 3167, which has required the City to amend affected municipal ordinances in order to comply with the new laws; 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 21 (SmartCode), Chapter 21.50 (Building Scale Plans), Section 21.50.140 (Architectural Standards), is amended in its entirety and replaced by the following section:

21.50.140 - Architectural Standards.

A. General to zones T3, T4, T4-O, T5, T5-O, T6.

1. Reserved.
2. Street screens should be constructed of a material matching the adjacent building façade.
3. All openings, including porches, galleries, arcades and windows, with the exception of shop fronts, shall be square or vertical in proportion.
4. Openings above the first story shall not exceed fifty percent of the total building wall area, with each façade being calculated independently.
5. Reserved.
6. Gable roofs, if provided, shall be sloped with a grade no less than twenty-five percent, or no less than three inches of rise for every foot of run. Roofs for porches,

ORDINANCE NO. _____

dormers, and attached sheds may be no less than two inches of rise for every foot of run.

7. Reserved.
8. Flat roofs shall be enclosed by parapets a minimum of forty-two inches high, or as required to conceal mechanical equipment to the satisfaction of the CRC.
9. Reserved.
10. Accessory buildings, enclosures, and fences shall be compatible with the style of the buildings they serve. Chain-link fencing is specifically prohibited.

B. General to Special Districts SD3, SD4, SD5.

1. Reserved.
2. Street screens should be constructed of a material matching the adjacent building façade.
3. Openings above the first story shall no exceed fifty percent of the total building wall area, with each façade being calculated independently.
4. Reserved.
5. Gable roofs, if provided, shall be sloped with a grade no less than twenty-five percent, or no less than three inches of rise for every foot of run. Roofs for porches, dormers, and attached sheds may be no less than two inches of rise for every foot of run.
6. Flat and low-slope roofs shall be enclosed by parapets a minimum of forty-two inches high, or as required to conceal mechanical equipment. All roof screening of equipment shall be architecturally compatible with the building.
7. Reserved.
8. Reserved.
9. Stucco, masonry, and cementitious siding shall be kept neatly painted, if used.
10. Accessory buildings, enclosures, and fence shall be compatible with the style of the buildings they serve. Chain-link fencing is specifically prohibited.
11. Approval by director of aviation: The type of building construction proposed shall be subject to written prior approval of the director of aviation as authorized agent of declarant. Tenant is encouraged to use natural material and native rock in the exterior elevations of improvements.

C. Reserved.

D. Specific to Special District SD6.

1. Reserved.
2. Reserved.
3. Reserved.
4. Reserved.
5. Street screens should be constructed of a material matching the adjacent building façade.
6. Reserved.
7. Gable roofs, if provided, shall be sloped with a grade no less than twenty-five

percent, or no less than three inches of rise for every foot of run. Roofs for porches, dormers, and attached sheds may be no less than two inches of rise for every foot of run.

8. Flat and low-slope roofs shall be enclosed by parapets a minimum of 42 inches high, or as required to conceal mechanical equipment. All roof screening of equipment shall be architecturally compatible with the building.
9. Reserved.
10. Stucco, masonry, and cementitious siding shall be kept neatly painted, if used.
11. Accessory buildings, enclosures, and fences shall be compatible with the style of the buildings they serve. Chain-link fencing is specifically prohibited.
12. All south facing windows shall be shaded.

SECTION 2. That the definition of "Regulating plan" in Title 21 (SmartCode), Chapter 21.70 (Definitions of Terms), Section 21.70.010 (Definitions), is amended to read as follows:

"Regulating plan" means a map or set of maps that shows the transect zones, civic zones, special districts (if any), thoroughfare network, and special requirements (if any), of areas subject to, or potentially subject to, regulation by the SmartCode.

SECTION 3. Except as herein amended, Title 21 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

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 21

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.

Title 21 - SMART CODE

21.50.140 - Architectural standards.

A. General to zones T3, T4, T4-O, T5, T5O, T6.

1. ~~Building wall materials may be combined on each facade only horizontally, with the heavier below the lighter.~~
2. Street screens should be constructed of a material matching the adjacent building facade.
3. All openings, including porches, galleries, arcades and windows, with the exception of shop fronts, shall be square or vertical in proportion.
4. Openings above the first story shall not exceed fifty percent of the total building wall area, with each facade being calculated independently.
5. ~~Doors and windows that operate as sliders are prohibited along frontages.~~ 6. Gable roofs, if provided, shall be sloped with a grade no less than twenty-five percent, or no less than three inches of rise for every foot of run. Roofs for porches, dormers, and attached sheds may be no less than two inches of rise for every foot of run.
7. ~~The exterior finish material on all Facades shall be limited to brick, cementitious siding and/or stucco.~~
8. Flat roofs shall be enclosed by parapets a minimum of forty-two inches high, or as required to conceal mechanical equipment to the satisfaction of the CRC.
9. ~~Balconies and porches shall be made of wrought iron or painted wood.~~
10. Accessory buildings, enclosures, and fences shall be compatible with the style of the buildings they serve. Chain-link fencing is specifically prohibited.

B. General to Special Districts SD3, SD4, SD5.

1. ~~Building wall materials may be combined on each facade only horizontally, with the heavier below the lighter.~~ 2. Street screens should be constructed of a material matching the adjacent building facade.
3. Openings above the first story shall not exceed fifty percent of the total building wall area, with each facade being calculated independently.
4. ~~Doors and windows that operate as sliders are prohibited along frontages.~~
5. Gable roofs, if provided, shall be sloped with a grade no less than twenty-five percent, or no less than three inches of rise for every foot of run. Roofs for porches, dormers, and attached sheds may be no less than two inches of rise for every foot of run.
6. Flat and low-slope roofs shall be enclosed by parapets a minimum of forty-two inches high, or as required to conceal mechanical equipment. All roof screening of equipment shall be architecturally compatible with the building.
7. ~~The maximum amount of allowed wood shall be no more than ten percent and utilized only for accents.~~
8. ~~Balconies and porches shall be made of painted wood or wrought iron.~~ 9. Stucco, masonry, and cementitious siding shall be kept neatly painted, if used.
10. Accessory buildings, enclosures, and fences shall be compatible with the style of the buildings they serve. Chain-link fencing is specifically prohibited.
11. Approval by director of aviation: The type of building construction proposed shall be subject to the written prior approval of the director of aviation as authorized agent of declarant. Tenant is encouraged to use natural material and native rock in the exterior elevations of improvements.

C. Specific to Special District SD4 and SD5.

- ~~1. The exterior finish material on all facades shall be limited to stone, brick, and/or stucco.~~
- ~~2. State-of-the-art changes in types of construction may be permitted from time to time only upon the express condition that any such change be consistent with the intent of these standards. Pre-fabricated metal buildings are specifically prohibited.~~

D. Specific to Special District SD6.

- ~~1. A minimum of fifteen percent of the exterior building facade materials on each elevation shall be brick, stone or stucco. The remainder of the facade shall be a combination of concrete, masonry, cementitious siding, or wood that has been treated to resist fire, rot, and insects.~~
- ~~2. State-of-the-art changes in types of construction may be permitted from time to time only upon the express condition that any such change be consistent with the intent of these standards. Pre-fabricated metal buildings are specifically prohibited.~~
- ~~3. The first level exterior building facade materials on each elevation shall be brick, stone, concrete or stucco. The remainder of the facade shall be a combination of glass, concrete, masonry, or wood that has been treated to resist fire, rot, and insects.~~
- ~~4. Building wall materials may be combined on each facade only horizontally, with the heavier below the lighter.~~
5. Streetscreens should be constructed of a material matching the adjacent building facade.
- ~~6. Doors that operate as sliders are prohibited along frontages.~~
7. Gable roofs, if provided, shall be sloped with a grade no less than twenty-five percent, or no less than three inches of rise for every foot of run. Roofs for porches, dormers, and attached sheds may be no less than two inches of rise for every foot of run.
8. Flat and low-slope roofs shall be enclosed by parapets a minimum of 42 inches high, or as required to conceal mechanical equipment. All roof screening of equipment shall be architecturally compatible with the building.
- ~~9. Balconies and porches shall be made of painted wood, steel, wrought iron, or painted or integral color aluminum.~~
10. Stucco, masonry, and cementitious siding shall be kept neatly painted, if used.
11. Accessory buildings, enclosures, and fences shall be compatible with the style of the buildings they serve. Chain-link fencing is specifically prohibited.
12. All south facing windows shall be shaded.

(Ord. 16945 § 2 (part), 2008; Ord. No. 17378, § 2, 8-24-2010; Ord. No. 17542, §§ 35, 36, 4-26-2011; Ord. No. 17787, § 15, 5-15-2012; Ord. No. [18597](#), §§ 1—3, 11-15-2016)

Chapter 21.70 - DEFINITIONS OF TERMS

Sections:

21.70.010 - Definitions.

"Regulating plan" means a map or set of maps that shows the transect zones, civic zones, special districts (if any), thoroughfare network, and special requirements (if any), of areas subject to, or potentially subject to, regulation by the SmartCode. ~~(Syn: Land Study)~~

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 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.

H.B. No. 2439

President of the Senate

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.

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.

Secretary of the Senate

APPROVED: _____

Date

Governor