

CITY OF FORNEY, TEXAS

ORDINANCE NO. 19- _____

AN ORDINANCE OF THE CITY OF FORNEY, TEXAS, ENACTING AMENDMENTS TO THE CITY'S COMPREHENSIVE ZONING ORDINANCE AND BUILDING CODE REGULATIONS; PROVIDING FOR COMPLIANCE WITH NEW STATE LAWS AFFECTING MATERIALS USED IN THE CONSTRUCTION OR RENOVATION OF RESIDENTIAL AND COMMERCIAL BUILDINGS, RULES AND PROCEEDINGS BEFORE THE BOARD OF ADJUSTMENT; PROVIDING FOR APPEALS; PROVIDING RELATED DIRECTIVES TO THE CITY MANAGER; PROVIDING SAVINGS, REPEALING AND SEVERABILITY CLAUSES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the 86th Legislature of the State of Texas passed HB 2439 which was signed by Governor Abbott on June 14, 2019, with an effective date of September 1, 2019; and

WHEREAS, HB 2439 prohibits municipal regulation of materials used for construction and renovation of residential and commercial buildings in certain instances and subject to certain exceptions; and

WHEREAS, HB 2439 affects both the enactment of new regulations and the enforcement of existing regulations pertaining to materials for construction or alteration of residential and commercial buildings; and

WHEREAS, the City Council of the City of Forney ("City Council") finds that the regulations prescribing the types of materials, products or aesthetic methods used for the construction or alteration of residential and commercial buildings are essential for preserving the public health and safety of its citizens and substantially further the economic development and general welfare of the City; and

WHEREAS, the exemptions to the provisions of HB 2439 hereinafter provided by this Ordinance are in accordance with the purpose and content of such law; and

WHEREAS, it is the intent of this Ordinance to supersede enforcement of regulations prescribing the types of materials, products or aesthetic methods used for construction or renovation of residential and commercial buildings, insofar as they conflict with HB 2439; and

WHEREAS, it is the further intent of this Ordinance to provide procedures for appealing decisions of officials in the enforcement of regulations prescribing the types of materials, products and aesthetic methods used for construction or renovation of residential and commercial buildings; and

WHEREAS, it is the further intent of this Ordinance to provide information to citizens of the City that are affected by HB 2439 concerning the prohibitions and limitations on enactment and enforcement of zoning and building regulations prescribing the types of materials, products and aesthetic methods used for construction or renovation of residential and commercial buildings; and

WHEREAS, the 2019 Legislature enacted HB 2497, which requires amendments to procedures applicable to the rules and appellate procedures before the Board of Adjustment; and

WHEREAS, HB 2497 was signed by the Governor on June 10, 2019 and has an effective date of September 1, 2019; and

WHEREAS, it is the intent of the City Council to fully comply with the provisions of HB 2439 and HB 2497, while maximizing the public health, safety and general welfare of its citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORNEY, TEXAS, THAT:

Section 1. Findings Incorporated

All of the above premises are found to be true and correct factual and legislative determinations of the City of Forney and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

Section 2. Definitions

The following definitions apply to the provisions of this ordinance:

(a) “National model code” means a publication that is developed, promulgated, and periodically updated at a national level by organizations consisting of industry and government fire and building safety officials through a legislative or consensus process and that is intended for consideration by units of government as local law.

(b) “Residential building” means a building having the character of a one-family or two-family dwelling or a multiple single-family dwelling that is not more than three stories high with separate means of egress, including the accessory structures of the dwelling and that does not have the character of a facility used for the accommodation of transient guests or a structure in which medical, rehabilitative, or assisted living services are provided in connection with the occupancy of the structure.

(c) “Commercial building” means a building for the use or occupation of people for a public purpose or economic gain, or a residence if the building is a multi-family residence that is not defined as a residential building.

(d) “Building Code” means any of the following adopted by the City, as amended: the International Residential Code, the National Electrical Code; the International Building Code; the International Fire Code; the International Plumbing Code; the International Mechanical Code; the International Fuel Gas Code; the International Property Maintenance Code; and the International Swimming and Spa Code.

Section 3. Prohibitions on Enforcement

(a) Notwithstanding any other provision contained in the City’s ordinances, regulations or rules to the contrary, an official responsible for enforcement of the City’s Zoning Ordinance or Building Codes, as designated by city charter, ordinance or other authorization of the City, shall not:

(1) prohibit or limit, directly or indirectly, the use or installation of a building product or material in the construction, renovation, maintenance, or other alteration of a residential or commercial building if the building product or material is approved for use

by a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building; or

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

(b) An applicant who proposes to use a building material, product or aesthetic method in the construction or alteration of a residential or commercial building that is prohibited or limited by the City's adopted Zoning Ordinance or building codes, as amended, or that is less stringent than the standard established by such Ordinance or building codes, as amended, shall identify each provision in a national model code published within the last three code cycles that approves the use of such building material, product or aesthetic method, as a necessary requirement of the application.

(c) An applicant may agree in writing to employ a building material, product or aesthetic method for use in the construction or alteration of a residential or commercial building that otherwise cannot be enforced under subsection (a).

SECTION 4. Exemptions for Ordinances, Requirements and Programs

The prohibitions in Section 3 do not apply to the following ordinances, requirements or programs of the City or State, and the officials responsible for enforcement of the City's Zoning Ordinance and Building Codes, as designated by city charter, ordinance or other authorization of the City, shall apply all regulations and standards prescribed by such enactments, requirements or programs, whether such ordinances, requirements or programs existing or hereafter adopted or established, to the fullest extent therein provided:

(a) a local amendment of a building code to conform to local concerns if the amendment does not conflict with Sections 3(a) or (b);

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

(c) a requirement for a building necessary to consider the building eligible for windstorm and hail insurance coverage under Chapter 2210, Texas Insurance Code;

(d) an ordinance or other regulation that regulates outdoor lighting that is adopted for the purpose of reducing light pollution and that: (1) 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 (2) applies to outdoor lighting within five miles of the boundary of a military base in which an active training program is conducted;

(e) an ordinance that regulates outdoor lighting and is adopted under Subchapter B, Chapter 229, Texas Local Government Code, or under Subchapter B, Chapter 240, Texas Local Government Code; or

(f) installation of a fire sprinkler protection system under Tex. Occupation Code, section 1301.551(i), or under Tex. Health and Safety Code, section 775.045(a)(1).

SECTION 5. Exemptions for Buildings

The prohibitions in Section 3 do not apply to the following buildings, and the officials responsible for enforcement of the City's Zoning Ordinance and Building Codes, as designated by city charter, ordinance or other authorization of the City, shall apply all regulations and standards prescribed by those ordinances or codes to such buildings, whether such provisions are existing or hereafter adopted or established, to the fullest extent.

(a) a building located in a place or area designated for its historical, cultural, or architectural importance and significance by the City which were adopted by the City Council prior to April 1, 2019;

(b) a building located in a zoning district designated by the City Council after April 1, 2019 for its historical, cultural, or architectural importance and significance by the City, and for which the owner has voluntarily consented in writing to the application of the regulations or standards prohibited by Section 3, including the following zoning districts and any district that may hereafter be created by the City Council for its historical, cultural, or architectural importance and significance;

(c) 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), Texas Local Government Code, if the municipality (1) is a certified local government under the National Historic Preservation Act (54 U.S.C. Section 300101 et seq.); or (2) has an applicable landmark ordinance that meets the requirements under the certified local government program as determined by the Texas Historical Commission;

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

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

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

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

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

(i) 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, Texas Government Code.

SECTION 6. Appeal

An applicant, landowner or other aggrieved person may appeal the decision of an official responsible for enforcement of the City's Zoning Ordinance or Building Codes, as designated by city charter, ordinance or other authorization of the City, applying a regulation or standard to the

construction, renovation, maintenance, or other alteration of a residential or commercial building, which application is asserted to be prohibited by Section 3, in the following manner:

- (a) If the decision applies a requirement of a building code, to the Building Board of Appeals, or if there is no Building Board, to the Zoning Board of Adjustment; or
- (b) if the decision applies a requirement of the zoning ordinance, to the Zoning Board of Adjustment.

The appeal shall identify the provision or provisions which the appellant alleges to have been applied in violation of Section 3. The appeal shall be filed, processed and decided in the manner provided for appeals by the appellate entity herein designated.

SECTION 7. Amendments to Zoning Board of Adjustment Procedures

Notwithstanding any other provision contained in the City’s ordinances, regulations or rules to the contrary, the following provisions apply to the adoption of or amendment to rules of the Zoning Board of Adjustment and to appellate procedures before the Board.

(a) Rules of the Zoning Board of Adjustment adopted or amended on or after September 1, 2019, must be approved by the City Council.

(b) Appeals to the Board from the decision of an administrative official made on or after September 1, 2019, shall be governed by the following rules:

(1) an appeal of a decision by an administrative official that is not related to a specific application, address or project may be made by an aggrieved person or any officer, department, board, or bureau of the City affected by the decision.

(2) an appeal of a decision by an administrative official that is related to a specific application, address or project may be made by: the applicant; the owner or owner’s representative of the property that is the subject of the decision; an aggrieved person who is the owner of property within 200 feet of the property that is the subject of the decision; or any officer, department, board, or bureau of the City affected by the decision.

Section 8. Severability Clause

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation of this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

Section 9. Repealer Clause

Any provision of any prior ordinance of the City, whether codified or uncoded, which is in conflict with any provision of this Ordinance, is hereby repealed to the extent of the conflict, but

all other provisions of the ordinances of the City, whether codified or uncodified, which are not in conflict with the provisions of this Ordinance shall remain in full force and effect.

Section 10. Effective Date

This Ordinance shall become effective immediately upon its passage and publication as required by law.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Forney, Texas, on this the _____ day of _____, 2019.

Mary Penn, Mayor

ATTEST:

Dorothy Brooks, City Secretary

APPROVED AS TO FORM AND LEGALITY:

Jon Thatcher, City Attorney