

ORDINANCE NO. 19-08-22-28

**BUILDING MATERIAL STANDARDS AND BOARD OF ADJUSTMENTS AMENDMENTS
RELATED TO H.B. 2439 & H.B. 2497**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CORINTH, TEXAS, AMENDING SECTION 2 “ZONING REGULATIONS” OF THE UNIFIED DEVELOPMENT CODE OF THE CITY OF CORINTH; PROVIDING FOR THE INCORPORATION OF PREMISES; PROVIDING FOR AN AMENDMENT FOR COMPLIANCE WITH NEW STATE LAWS AFFECTING MATERIALS USE IN THE CONSTRUCTION OR RENOVATION OF RESIDENTIAL AND COMMERCIAL BUILDINGS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS/CONFLICT CLAUSE; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED \$2000 PER DAY FOR EACH VIOLATION THEREOF AND A SEPARATE OFFENSE SHALL BE DEEMED TO OCCUR ON EACH DAY THAT A VIOLATION EXISTS OR CONTINUES; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Corinth, Texas is a home rule municipality located in Denton County, Texas created in accordance with the provisions of Chapter 9 of the Local Government Code and operating pursuant to its Charter and the laws of the state of Texas; and

WHEREAS, the 2019 Legislature enacted HB 2439, prohibiting 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, HB 2439 was signed by the Governor on June 14, 2019 and has an effective date of September 1, 2019; and

WHEREAS, the City Council of the City of Corinth finds that City 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, there is insufficient time before HB 2439 takes effect to amend specific provisions of the City’s zoning and building regulations that may conflict with the provisions of HB 2439; 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, in so far 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 of and appellate procedures before the Zoning Board of Adjustment of the City; 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; and

WHEREAS, it is the further intent of this Ordinance to amend provisions of the City's zoning regulations codified as part of the City's Unified Development Code in order to implement such changes; and

WHEREAS, the City has given notice of the amendments to the zoning and building regulations contained in this Ordinance in accordance with all provisions of state law and the City's ordinances; and

WHEREAS, a public hearing on the provisions of this Ordinance before the City's Planning and Zoning Commission was conducted on August 19, 2019; and

WHEREAS, the City Council has received the report of the Commission recommending approval of this Ordinance; and

WHEREAS, a public hearing on the provisions of this Ordinance before the City Council was conducted on August 22, 2019; and

WHEREAS, the City Council finds that the procedures set forth herein promote order and the safe construction and occupation of structures and such regulations reasonably promote the health, safety and welfare of the public.

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

SECTION 1
INCORPORATION OF PREMISES

The above and foregoing recitals are found to be true and correct and are incorporated into the body of this Ordinance for all purposes.

SECTION 2
AMENDMENTS

2.01 That section 2.09.04 "Building Façade Material Standards" of Subsection 2.09 "Zoning Development Standards" of Section 2, "Zoning Regulations" of the Unified Development Code of the City of Corinth, Texas is hereby amended to be and read in its entirety as follows, and all other

subparagraphs and subsections of Section 2, "Zoning Regulations" not specifically amended hereby shall remain in full force and effect without amendment:

"2.09.04. - Building Façade Material Standards

A. Definitions. The following definitions apply to the provisions of this Article:

(a) "Building Code(s)" means any and all of the codes adopted by the City of Corinth as set forth in Chapter 150, "Building Regulations" of the Code of Ordinances of the City, as amended, including local amendments thereto, as currently existing or as later adopted or amended.

(b) "City" means City of Corinth, Texas.

(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) "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. "National Model Code" includes the International Residential Code, the National Electrical Code and the International Building Code.

(e) "Official" means 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

(f) "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 (3) 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.

(g) "Zoning Ordinance" means the Zoning Ordinance of the City of Corinth, Texas, codified as Appendix "B" to the Code of Ordinances of the City, as currently existing or as later adopted or amended.

B. 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 (3) 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).

C. Exemptions for ordinances, requirements and programs.

The prohibitions in Section B above do not apply to the ordinances, requirements or programs of the City or State listed in this Section, and the officials responsible for enforcement of the City's Zoning Ordinance and Building Codes, as designated by City, shall apply all regulations and standards prescribed by such ordinances, requirements or programs listed herein, whether such ordinances, requirements or programs listed herein are currently existing or are hereafter adopted or established by City or State, to the fullest extent therein provided. This Section applies to:

(a) a local amendment of a Building Code to conform to local concerns if the amendment does not conflict with Sections B(a) or B(b) of this Article;

(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, as amended;

(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, as amended, or under Subchapter B, Chapter 240, Texas Local Government Code, as amended; or

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

D. Exemptions for Buildings. The prohibitions in Section B 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 the City, shall apply all regulations and standards prescribed by those ordinances or codes to such buildings, where such provisions are currently existing or hereafter adopted or established by City or State, to the fullest extent therein provided. This Section applies to:

(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 the City may regulate under Section 211.003(b), Texas Local Government Code, as amended, if the City (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 Local Government Code, as amended.

E. Appeal.

An applicant, landowner or other aggrieved person ("Appellant") may appeal the decision of an Official applying a regulation or standard to the construction, renovation, maintenance, or other alteration of a Residential Building or a Commercial Building, when the application of such regulation or standard by the Official is asserted by the Appellant to be prohibited by Section B, and such appeal shall be asserted as follows:

(a) If the decision applies a requirement of a Building Code, to the Board of Construction Appeals, or if there is no Board of Construction Appeals, 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 specific provision or provisions which the Appellant alleges to have been applied in violation of Section B of this Article. The appeal shall be filed, processed and decided in the manner provided for other appeals by the body designated by this Section.”

2.02 That section 2.11.01 “Zoning Regulation Appeal” of Subsection 2.11 “Zoning Relief Procedures” of Section 2, “Zoning Regulations” of the Unified Development Code of the City of Corinth, Texas is hereby amended to be read in its entirety as follows, and all other subparagraphs and subsections of Section 2, “Zoning Regulations” not specifically amended hereby shall remain in full force and effect without amendment:

“2.11.01. - Zoning Regulation Appeal

A. Types of Appeals The following are the types of Zoning Regulation Appeal contained within this UDC:

1. Appeal of a City Administrative or Interpretative Decision.
 - a. 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.
 - b. An appeal of a decision by an administrative official that is related to a specific application, address or project may be made by any one of the following
 - (i) the applicant;
 - (ii) the owner or owner’s representative of the property that is the subject of the decision;
 - (iii) an aggrieved person who is the owner of property located within two hundred (200) feet of the property that is the subject of the decision; or
 - (iv) any officer, department, board, or bureau of the City affected by the decision.
 - c. In exercising the Board's authority herein, the Board may reverse or affirm, in whole or in part, or modify the City administrative official's order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination, and for that purpose the Board has the same authority as the City's administrative official.
 - d. Public hearings shall be held in accordance with 2.10.05. E.4 of the Unified Development Code
2. Appeal to the City Council of a SCSP or a Zoning Vested Rights Petition Decision.
 - a. See 2.10.08. H.2.c.i Appeal of a Substantially Conforming Site Plan Decision made by the Director of Planning.
 - b. See 2.11.04. G Appeal to the Council of a Decision on a Zoning Vested Rights Petition.
3. Appeal to District Court of a decision of the City Council or Board of Adjustment. Any person, department, board, or bureau of the City affected by a decision of the City Council or Board of Adjustment may appeal to District Court.

B. Appeals Procedure to the City Council or Board of Adjustment

1. **Timing and Fee.** Appeal to the City Council or Board of Adjustment shall be taken within thirty (30) calendar days from the date of the decision by filing with the Responsible Official from whom the appeal is taken and with the City Secretary a notice of appeal specifying the grounds thereof, and by paying a filing fee at the office of the City Secretary at the time the notice is filed.
2. **Transmission of Record.** The Responsible Official from whom the appeal is taken shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.
3. **Stays of Proceedings.** An appeal stays all proceedings in furtherance of the action appealed from, unless the Responsible Official certifies to the City Council or Board of Adjustment, that by reason of facts stated in the certificate a stay would, in the Responsible Official's opinion, cause imminent peril to life or property.

C. Appeals Procedure to District Court

1. **Timing.** An appeal from any action, decision, ruling, judgment, or order of the City Council or Board of Adjustment may be taken by any person or persons, jointly or severally, or any taxpayer; or any officer, department, board, or bureau of the City to the district or county court by filing notice of appeal with the City Secretary and with the Board of Adjustment within ten (10) calendar days from the filing of the decision of the board, which notice shall specify the grounds of such appeal.
2. **Transmission of Record.** Upon filing of the notice of appeal as herein provided, the court may grant a writ of certiorari directed to the board in this event, the City Council or Board of Adjustment shall transmit to the court clerk and the petitioner the original or certified copy of the papers constituting the record in the case, together with the order, decision, or ruling.
3. **Stays of Proceedings.** An appeal to the district court from the City Council or Board of Adjustment stays all proceedings in furtherance of the action appealed from, unless the mayor or chairman of the Board of Adjustment, from which the appeal is taken certifies to the court clerk, after the notice of appeal shall have been filed, that by reasons of fact stated in the certificate, a stay would, in her or his opinion, cause imminent peril to life or property.

D. **Fees.** All fees for all types of Applications, forms, plans, notifications, appeals, and petitions required under this UDC shall be established by the City Council within the Fee Schedule.

E. **Rules.** Rules of the Board of Adjustment adopted or amended on or after September 1, 2019, shall be approved by the City Council prior to becoming effective.

SECTION 3
SEVERABILITY

If any section, subsection, clause, phrase, or provision of this Ordinance, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void, or unconstitutional, the remaining sections, subsections, clauses, phrases, and provisions of this Ordinance, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

SECTION 4
SAVINGS/CONFLICT

In the event of a conflict between the provisions of this Ordinance, the Zoning Regulations of the Unified Development Code and any other regulation or rule prescribed by Charter, another ordinance, resolution or other authorization of the City, the provisions of this ordinance shall control. Notwithstanding the foregoing, all rights and remedies of the City are expressly saved as to any and all complaints, actions, claims, or lawsuits, which have been initiated or have arisen under or pursuant to such conflicting Ordinance, or portion thereof, on the date of adoption of this Ordinance shall continue to be governed by the provisions of that Ordinance and for that purpose the conflicting Ordinance shall remain in full force and effect.

SECTION 5
PENALTY

Any person, firm or corporation who violates any provision of this Ordinance or the Code of Ordinances, as amended hereby, shall be subject to a fine not to exceed the sum of five hundred dollars (\$500.00) for each offense, and each and every day any such offense shall continue shall be deemed to constitute a separate offense, provided, however, that in all cases involving an intentional, knowing, reckless or criminally negligent violation of any provision of this ordinance or Code of Ordinances, as amended hereby, governing public health shall be subject to a fine not to exceed the sum of two thousand dollars (\$2,000.00) for each offense, and each and every day any such offense shall continue shall be deemed to constitute a separate offense.

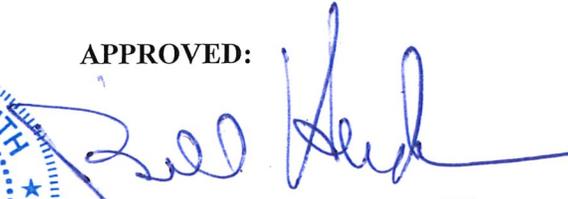
SECTION 6
PUBLICATION/EFFECTIVE DATE

This Ordinance shall take effect upon its publication as required by law. The City Secretary is directed to publish the caption and penalty of this Ordinance as required by the City Charter and state law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF CORINTH, TEXAS on this the 22nd day of August 2019.



APPROVED:

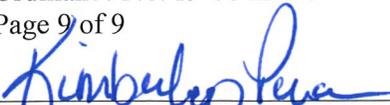


Bill Heidemann, Mayor
City of Corinth, Texas

ATTEST:

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Kimberly Pence, City Secretary
City of Corinth, Texas

APPROVED AS TO FORM AND LEGALITY:



Patricia A. Adams, City Attorney