

**ORDINANCE NO. 2019-684**

**AN ORDINANCE OF THE CITY OF CEDAR HILL, TEXAS, CAUSING REGULATIONS CONTAINED WITHIN CHAPTER 4 ENTITLED "BUILDINGS AND BUILDING REGULATIONS" AND WITHIN CHAPTER 23 ENTITLED "ZONING" OF THE CODE OF ORDINANCES OF THE CITY OF CEDAR HILL, TEXAS, TO BE IN COMPLIANCE WITH HOUSE BILL 2439 AFFECTING MATERIALS USED IN CONSTRUCTION OR RENOVATION OF RESIDENTIAL AND COMMERCIAL BUILDINGS, WHICH BILL TAKES EFFECT ON SEPTEMBER 1, 2019; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION.**

**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**, it is the intent of the City Council of the City of Cedar Hill, Texas ("City"), to fully comply with the provisions of HB 2439, while maximizing the public health, safety and general welfare of its citizens; and

**WHEREAS**, the City Council 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 City Council further finds that the exemptions provided for in HB 2439 advance the public health, safety and general welfare of the citizens 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, Texas, 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**, on August 4, 2019, due notice of public hearings before the Planning and Zoning Commission and City Council was published in the City's official newspaper, which included the time and place of the public hearings, to consider and hear public comment on the proposed amendment; and

**WHEREAS**, on August 20, 2019, the City's Planning and Zoning Commission held a public hearing regarding this matter; and

**WHEREAS**, following the public hearing, the Planning and Zoning Commission considered the request and rendered its recommendation which was conveyed to the City Council; and

**WHEREAS**, on August 27, 2019, the City Council held a public hearing and accepted comments from the public regarding the requested amendment; and

**WHEREAS**, the City Council of the City of Cedar Hill urges the Texas Legislature to reconsider the provisions of the Act at its earliest opportunity.

**WHEREAS**, the City Council finds that this Ordinance substantially advances the public health, safety and general welfare of the citizens of the City, Texas;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CEDAR HILL, TEXAS, THAT:**

#### **SECTION 1. INCORPORATION OF RECITALS.**

The foregoing recitals hereby are incorporated by reference and made a part hereof as if fully set forth.

## **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. "National model code" includes the International Residential Code, the National Electrical Code and the International Building Code.

(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 Building Code, the National Electrical Code; the International Mechanical Code; and the International Plumbing Code.

(e) "Zoning Ordinance" means Ordinance No. 2001-64, as may be amended from time to time.

## **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 alternation 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 are 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 therein provided:

(a) a building located in a place or area designated for its historical, cultural, or architectural importance and significance 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. APPEALS.**

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. SAVINGS CLAUSE.**

This ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances for the City of Cedar Hill, Texas, as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event, conflicting provisions of such ordinances and Code are hereby superseded.

#### **SECTION 8. SEVERANCE CLAUSE.**

Should any word, sentence, paragraph, subdivision, clause, phrase, or section of this Ordinance, or of the Code of Ordinances, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said Ordinance or the Code of Ordinances, as amended hereby, which shall remain in full force and effect.

#### **SECTION 9. EFFECTIVE DATE.**

Because of the nature of the interests sought to be protected and of the safeguards sought to be provided by this Ordinance, and in the interest of the health, safety, and welfare of the citizens of Cedar Hill, Texas, this Ordinance shall take effect immediately after its passage, approval, and publication as required by law.

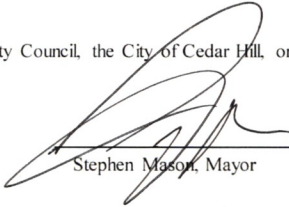
#### **SECTION 10. PUBLICATION.**

The City Secretary is hereby authorized and directed to cause publication of the descriptive caption and penalty clause hereof as an alternative method of publication provided by law.

#### **SECTION 11. FINDINGS INCORPORATED.**

The findings set forth above at the beginning of this Ordinance are legislative findings of the City Council and are incorporated as if fully set forth herein. The City Council hereby further finds and determines that the rules, regulations, terms, conditions, provisions and requirements of this Ordinance are reasonable and necessary to protect the public health, safety and quality of life.


**PASSED, APPROVED and ADOPTED** by the City Council, the City of Cedar Hill, on this the 27th day of August, 2019.

  
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Stephen Mason, Mayor

ATTEST:

  
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Belinda Berg, City Secretary

APPROVED AS TO FORM:

  
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Ron MacFarlane  
City Attorney