

**CITY OF EL PASO, TEXAS**  
**AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Department of the City Manager  
Development & Infrastructure Services

**AGENDA DATE:** May 9, 2006

**CONTACT PERSON/PHONE:** Patricia D. Adauto, Deputy City Manager  
(915) 541-4853

**DISTRICT(S) AFFECTED:** All Districts

**SUBJECT:**

Discussion and action on proposed text revisions to Title 20 (Zoning) of the El Paso Municipal Code as recommended by the Building & Zoning Advisory Committee: Chapter 20.16 (Screening & Fencing Regulations) and Chapter 20.22 (Nonconforming Situations).

**BACKGROUND / DISCUSSION:**

Chapter text per approved presentation schedule.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

The Building and Zoning Advisory Committee (BZAC), per directive of Ordinance Nos. 014102 & 014116, was charged with reviewing and providing recommendations on amendments to Titles 5 (Business Taxes, Licenses and Regulations), 9 (Health and Safety), 13 (Streets, Sidewalks and Public Places), 15 (Public Services), 17 (Housing), 18 (Building and Construction), and 20 (Zoning) of the El Paso City Code that deal primarily with development regulations, which restrict the land use and building construction of a particular property. The BZAC has substantially completed its review of the Code and has forwarded its recommendations to the El Paso City Council. Per recommendations of the Urban Land Institute and authorization of the City Council, the proposed text is recommended for adoption.

May 9	Briefing Report to City Council
May 10	DCC Action
May 18	CPC Action
June 6	Ordinance Introduction
June 27	Ordinance Public Hearing & Adoption

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

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_

**SECTION HEAD:**

**APPROVED FOR AGENDA:**

**CITY MANAGER:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**CHAPTER 20.16  
SCREENING & FENCING**

<b>Sections:</b>	<b>20.16.010</b>	<b>Generally.</b>
	<b>20.16.020</b>	<b>Mandatory Requirements.</b>
	<b>20.16.030</b>	<b>Permitted Walls.</b>
	<b>20.16.040</b>	<b>Masonry Walls.</b>
	<b>20.16.050</b>	<b>Vision clearance at intersections.</b>
	<b>20.16.060</b>	<b>Maintenance.</b>
	<b>20.16.070</b>	<b>Fees <u>(s/c G recommends moving this section to admin)</u></b>

**20.16.010 Generally.**

Fences and walls shall meet the requirements set forth in this chapter.

**20.16.020 Mandatory Requirements.**

- A. Where both properties are vacant, a six-foot high masonry wall (measurement of height is from the high ground) shall be erected by the owner of whichever property first builds upon it;
1. Between all R (including Ranch-Farm) and A districts;
  2. Between all R (including Ranch-Farm) and C districts;
  3. Between all R (including Ranch-Farm) and manufacturing or industrial districts;
  4. Between all A and C districts;
  5. Between all A and manufacturing or industrial districts by the owner of whichever property that first builds upon it or uses it for outside storage;
  6. Between all R (including Ranch-Farm) or A districts and all special purpose districts as part of the approved site plan for the special purpose district.
  7. In R districts (including Ranch-Farm), between residential uses and those non-residential uses permitted in R districts by the owner of the property having the non-residential use when he builds upon it.
  8. Within mixed-use districts, between residential uses and non-residential uses pursuant to the approved development permit.
- B. In pre-existing developments, a six-foot high masonry wall (measurement of height is from the high ground) shall be erected;
1. Between all R (including Ranch-Farm) and A districts by the owner of the A property when he builds upon it;
  2. Between all R (including Ranch-Farm) and C districts by the owner of the C property when he builds upon it;

3. Between all R (including Ranch-Farm) and manufacturing or industrial districts by the owner of the M or I property when he builds upon it;
4. Between all A and C districts by the owner of the C property when he builds upon it;
5. Between all A and manufacturing or industrial districts by the owner of whichever property first builds upon it or uses it for outside storage;
6. Between all R (including Ranch-Farm) or A districts and all special purpose districts as part of the approved site plan for the special purpose district.
7. In R districts (including Ranch-Farm), between residential uses and those non-residential uses permitted in R districts (such as churches, schools) by the owner of the property having the non-residential use.
8. Within mixed-use districts, between residential uses and non-residential uses pursuant to the approved development permit.

Provided, however, that upon submission of a written application from the property owner, the zoning administrator may approve a revised location of a required wall within the property to achieve an equal or improved use of the screen; or may waive the requirement when topographic conditions negate the visual screening effect of the wall; or where the property is adjacent to non-residential uses or common recreational areas, such as golf courses, parks or other areas designated as open area under the provisions of this title. No masonry wall shall be required where a street is the boundary line between the districts except that this does not apply to properties used for outside storage. A fee for processing requests to amend the requirement for a mandatory wall shall be adopted by resolution of city council.

C. A six-foot-high chain link, tubular or wrought iron fence or a six-foot-high masonry wall or a combination thereof shall be erected along any property line adjacent to drainage or irrigation canals when buildings are erected on such properties or before the property is used for other than agricultural uses. (Note: see Title 19 (Subdivisions) for additional requirements regarding walls adjacent to drainage channels and basins.)

D. Walls and fences as required in subsections A, B and C of this section shall be installed before the issuance of certificates of occupancy and compliance for any building constructed on the property or before any use is made of such property.

E. Any property used for off-street parking by special permit shall be screened from any adjacent property by a six-foot-high masonry wall, if such adjacent property is R-zoned. "Adjacent" means the nearest or closest to, whether or not separated by an intervening street or alley. The fence shall be built in accordance to all applicable code requirements including those for visibility triangles. No openings for vehicular or pedestrian ingress or egress shall be allowed unless specifically authorized and designated on the approved site plan. The city council may reduce the six-foot height requirement by so designating on the site plan whenever it determines that a reduction is needed for safety or visibility purposes.

F. A six-foot-high screening wall shall be required for a transportation terminal type A or B, passenger station, freight station, motor-carrier terminal, warehouse, railyard, airport, intermodal facility, heliport, airpad, helistop, interlocking tower, diesel maintenance facility and railroad repair shop as provided in [Section 20.10.240](#); provided, however, that this requirement may be waived by the zoning administrator when topographic conditions, structures or distance effectively substitute for the visual effect of the screen; or where the property is adjacent to common recreational areas, such as golf courses, parks or other designated areas designated as open area under the provisions of this title. A fee for processing requests to waive the requirement for a mandatory wall shall be adopted by resolution of city council.

#### **20.16.030 Permitted Walls.**

A. In residential or apartment districts or for residential or apartment uses in other districts, a screening wall or fence not in excess of [eight](#) (8) feet high may be erected around that part of the lot behind the front wall of the main building or behind the front yard line whenever the main building is located further back. A screening wall or fence not in excess of forty-two inches high may be erected in that part of a lot in front of the front line of the main building, except that no screening wall or fence may be more than thirty-six inches high within twenty feet of a street intersection or where visibility of vehicle or pedestrian traffic might be impeded as specified in [Section 20.16.060](#) of this chapter.

For the purposes of this regulation, a wall or fence may exceed the heights set forth in this subsection up to a total height of ten feet, except within twenty feet of a street intersection or where vehicle or pedestrian traffic might be impeded as specified in [Section 20.16.060](#) of this chapter. This provision applies when the vertical surface of the wall or fence above the [eight](#) feet or forty-two inches, whichever applies, is not less than seventy-five percent open, and which does not otherwise impede the vision clearance for motor vehicle or pedestrian traffic at intersections or driveway exits. The wall or fence may include wrought-iron fences with or without masonry columns, chain link, picket, split rail and other similar type fences not otherwise prohibited.

B. In commercial, manufacturing and industrial districts where storage is a permitted accessory use with screening, and where not otherwise prohibited, a screening wall or fence not in excess of [eight](#) feet high may be erected along or behind any lot line; provided, that where any access driveway is located, the height of such wall or fence shall not exceed forty-two inches in height within ten feet of the street lot line; and provided that such wall or fence shall not exceed forty-two inches in height for visual clearance at other locations as determined by the traffic engineer. No screening wall or fence shall be more than thirty-six inches high within twenty feet of a street intersection as specified in [Section 20.16.060](#) of this chapter.

#### **20.16.040 Masonry Walls.**

A. A masonry wall may exceed the height standard up to a maximum of eight inches for the purpose of rounding off the wall.

**B. Masonry walls over six (6) feet in height must be designed as structural walls.**

**20.16.050 Maintenance.**

Fences and walls shall be maintained in good repair and shall be kept vertical, uniform and structurally sound.

**20.16.060 Vision clearance at intersections.**

On any corner lot, within that area of a triangle (twenty-foot triangle) formed by the intersecting property lines and a diagonal line joining the property lines at points twenty feet from their intersection, the following conditions shall apply in any front yard, rear yard or both yards:

A. It is unlawful for any person to place, construct or reconstruct any building or structure, including a fence or wall, on a corner lot if the top of such building or structure is more than three feet above the level of the centerline of the nearest abutting street, and such building or structure is within the above twenty-foot triangle; provided, this subsection shall not apply to a retaining wall necessary for the support of the lot, nor to a wall of a building when the building legally extends into such triangle.

B. It is unlawful for any person to locate motor vehicles or motor vehicle parking spaces on a corner lot if the top of any motor vehicle parked there is more than three feet above the level of the centerline of the nearest abutting street, and such motor vehicles or motor vehicle parking space is within the above twenty-foot triangle.

C. Where special conditions exist, or where practical difficulties in the development and adequate use of land would result from the literal enforcement of the terms of this section, the director of Traffic Engineering is authorized to issue a permit to vary the requirements set forth in this chapter; provided, that any such variances granted shall be in harmony with the general intent of this section, and consistent with the public interest, safety and general welfare. Any substantial variances shall be in writing and shall be specifically set forth in the permit issued.

**20.16.070 Fees *(move this section to Admin 20.04?)***

A. Fee--Request to amend mandatory wall requirement.

1. Pursuant to subsection A of Section 20.16.020 the city council will adopt by resolution a processing fee for requests to amend or waive the requirement for a mandatory six-foot high masonry wall **when an alternate location within the property is requested** or when topographic conditions, **adjacent non-residential uses** or common recreational areas negate the visual screening effect of the wall;

2. The applicant shall submit to the zoning administrator a letter requesting that the requirement be amended and stating the reasons for such request. The letter shall specify the address and legal description of the affected property, and shall be accompanied with three copies of an accurately drawn site plan showing the location of the request. The fee shall be paid to the city cashier through the office of the zoning administrator when such request is submitted.

**B. Fee-Request to amend a minimum perimeter setback**

1. Pursuant to subsection of Section 20.10.240 the city council will adopt by resolution a processing fee for requests to reduce the requirement for a minimum perimeter setback for transportation terminals when topographic conditions or common recreational areas negate the buffering effect of the perimeter setback.

2. The applicant shall submit to the zoning administrator a letter requesting that the requirement be reduced and stating the reasons for such request. The letter shall specify the address and legal description of the affected property, and shall be accompanied with three copies of an accurately drawn site plan showing the location of the request. The fee shall be paid to the city cashier through the office of the zoning administrator when such request is submitted.

## Chapter 20.22 Nonconforming Situations

20.22.010	Policy.
20.22.020	Nonconforming lots.
20.22.030	Nonconforming uses and structures.
20.22.040	Nonconforming dwellings in commercial and manufacturing districts.
20.22.050	Certificates of occupancy required.
20.22.060	Property affected by right-of-way acquisition.
20.22.070	Non-Conforming Signs

### 20.22.010 Policy.

It is the declared purpose of this chapter that nonconforming situations be eliminated and be required to comply with the regulations of the El Paso Municipal Code, having due regard for the property rights of the persons affected, the public welfare and the character of the surrounding area.

### 20.22.020 Nonconforming lots.

A single-family dwelling may be erected on a lot even though of less width or area than required by the regulations for the district in which it is located, if such lot was separately owned at the time when any zoning restrictions as to its required width or area (whether under this title or any other ordinance or amendment) first became effective and if the owner of such lot does not own any other lot, parcel or tract immediately adjacent thereto.

### 20.22.030 Nonconforming uses and structures.

A. Any structure or use of property existing at the time when any zoning restrictions as to use, area, yards, setbacks, or off-street parking (whether under this or any other ordinance or amendment) first became effective as to such structure or use, and which does not conform to the regulations described in this title shall be registered with the Zoning Administrator as nonconforming and subject to the following limitations.

1. A nonconforming use of a structure may be extended to any portion of a building which portion was arranged or designed for such nonconforming use on or prior to the date on which the use became nonconforming. Written documentation establishing the date of the original design or arrangement of use shall be required at the time of submittal for a building permit.
2. A nonconforming use shall not be changed unless changed to a conforming use. A nonconforming use if changed to a conforming use may not thereafter be changed back to any nonconforming use. A nonconforming use which shall cease for a continuous period of more than one hundred twenty days shall be deemed permanently abandoned and may not be

continued. A seasonal discontinuance of a use, or a temporary discontinuance of a use for maintenance or repair, is excluded from a calculation of the 120 day period.

a. The right to continue a nonconforming use or structure ceases when the structure is damaged or destroyed by the intentional act of the owner or his agent.

b. If the structure is damaged or destroyed other than by the intentional act of the owner or his agent, the structure may be restored or reconstructed to the same approximate height, floor area and location that it had immediately prior to damage or destruction, but may not be more non-conforming than the previous structure; provided that an application for a building permit is submitted within 120 days from the date of destruction.

B. A cemetery, sewage disposal or treatment plant, hospital, sanatorium, correctional institution, or municipal or state building or institution existing in any district on November 23, 1955, or any M-1 district use so existing in a C-4 or C-5 district, shall be deemed a conforming use upon the plot devoted to such use on the effective date of Ordinance No. 1448, adopted on November 23, 1955.

C. When an amendment to this title is hereafter adopted which changes the requirements or the boundaries of a particular district as now indicated on the zoning map of the city and the supplements thereto, the amendment shall not affect existing structures or uses and shall not require any changes in structures already under construction in that district at the time the amendment is adopted and all such structures or uses shall be considered nonconforming.

D. In the case of a structure which is nonconforming only as to space, setback or off-street parking requirements, and is used only for conforming uses, addition to or extension of such nonconforming structure is permitted:

1. If the addition or extension will be no more nonconforming, in respect to space and setback requirements, than the existing structure and is not longer along the nonconforming setback line than one-half of the length of the existing nonconforming structure along the same line.

2. Such addition or extension shall, however, conform to all other requirements of the zone in which it is located, including off-street parking.

3. If a non-conforming structure is non-conforming as to off-street parking requirements, a change of occupancy to another use permitted in the zoning district is allowed provided that the parking requirements are the same as the original (non-conforming) use. If a change of occupancy to a use that requires additional parking is requested, the additional off-street parking required for the new use must be provided.

E. Any uses permitted in "Q" quarry district, which lawfully existed on September 15, 1987, shall be deemed conforming uses upon the land on which such use exists, subject to the following requirements:

1. The landowner or operator shall submit to the **Building Official** satisfactory proof that the subject use was lawfully in existence on September 15, 1987, by providing a metes and bounds description of the area, certified by a professional engineer or a registered land surveyor, and one of the following:

a. Evidence that the uses existed on November 23, 1955;

b. Evidence of a prior issuance of a valid special permit; or

c. Evidence that the area was certified a nonconforming use upon annexation of the land as specified in Section **20.04.XXX** of this title.

2. Any use which registered on or before July 21, 1988 as provided in subparagraph 1 of this subsection, shall be subject to Section **20.10.500**.

3. Any use which did not register on or before July 21, 1988, and which receives actual notice of the requirements of this section, shall have thirty days from the date of actual notice to register with the **Building Official**, and shall be subject to **Section 20.10.500** of this code. Failure to register within the thirty-day period shall require compliance with all provisions of **Section 20.10.500**, and shall be subject to the penalty as provided therein.

4. In any case, with or without actual notice of the registration requirements of this section, any use regulated by **Section 20.10.500**, which was not registered as provided in subparagraph 1 of this subsection on or before September 15, 1990, shall thereafter cease operation and shall no longer be deemed a conforming or nonconforming use. Such use shall be subject to all the provisions of **Section 20.10.500**;

F. A nonconforming commercial use within a building, or portion thereof, in the special residential revitalization district (SRR) may be changed to a neighborhood commercial use listed in Chapter 20.08 without having to apply for a special permit. A nonconforming commercial use in the SRR district which shall cease for a continuous period of more than one hundred twenty days shall be deemed permanently abandoned and may not be continued or changed pursuant to this subsection. The applicant shall provide the following in order to change use and obtain a building permit or certificate of occupancy:

1. Proof that the building and the use existed on or before November 11, 1986, the date on which the SRR district was created, and

2. Registration with the zoning administrator of the new nonconforming commercial use, and

3. A finding by the zoning administrator pursuant to **Section 20.04.XXX** that the proposed use is one of the uses listed under **Section 20.08**.

**20.22.040 Nonconforming dwellings in commercial and manufacturing districts.**

A dwelling nonconforming as to use in a commercial or manufacturing district shall be permitted; provided, that the yard standards and the off-street parking requirements at the time the structure became nonconforming as to use are maintained.

**20.22.050 Certificates of occupancy required.**

A certificate of occupancy shall be required for all legal uses which became nonconforming as of the effective date of the ordinance codified herein. (See Section 20.04.XXX).

**20.22.060 Property affected by right-of-way acquisition.**

A. Relocation of Existing Uses. Zoning restrictions as to lot area, yards or setbacks may be reduced as applied to a structure that is to be relocated on any lot a portion of which was acquired under the threat of condemnation or in an eminent domain action; provided, that the following requirements are met:

1. The gross floor area of the new building or structure is no greater than that of the previously existing building or structure;
2. The new building or structure is used only for the previously nonconforming use or for a use permitted in the zoning district; and
3. Yard and Setback Requirements.
  - a. For commercial and manufacturing uses, the minimum yard standards are met for the most restrictive district in which the use is permitted,
  - b. For residential uses, three-fifths of the yard standards are met for the district in which the use is permitted,
  - c. For any use, the setback requirements provided in any zoning district or imposed as a condition of a zoning change may be waived provided that the setback requirements of this subsection are met;
4. If on-site parking was provided for the nonconforming use prior to the acquisition of right-of-way, a minimum of eighty-five percent of the number of spaces existing prior to the acquisition of right-of-way shall be provided for the new building or structure.

B. Relocation of Existing Nonconforming Use. A structure whose use is deemed nonconforming because it preexisted any zoning restrictions as to use, may be relocated to another portion of the site on which that structure is located; provided, that the applicant obtains a verification from the zoning administrator that the use of property preexisted any zoning restrictions as to use, and that the requirements of subsection A of this section have been satisfied.

C. The denial of a building permit under this section shall not be construed to affect an applicant's right to request a special exception from or an appeal to the zoning board of adjustment pursuant to Chapter 2.16 of this code.

#### **20.22.070 Nonconforming signs**

##### **A. Signs Which Are Nonconforming.**

Signs which were lawfully erected prior to the adoption of the ordinance herein codified which do not conform to its provisions as well as signs existing at the time the area wherein the sign is located is annexed are deemed to be nonconforming.

B. Registration of Nonconforming Signs. Each nonconforming sign shall be registered by the owner or owners of the sign by filing with the Building Official. Signs without permits which were registered properly pursuant to any prior city code are deemed to be nonconforming.

##### **C. Municipal Board on Sign Control.**

1. Creation. The mayor shall appoint a municipal board on sign control subject to council approval which shall include two real estate appraisers who are registered with the Society of Real Estate Appraisers or the American Institute of Real Estate Appraisers; one person engaged in the sign business within the city; one employee of the State Department of Highways and Public Transportation who is familiar with real estate valuations and eminent domain proceedings; and one architect or landscape architect licensed in the state. Each appointment shall be for a term of two years and the board shall have the powers and duties given to it by Chapter 216 of the Texas Local Government Code.

2. Valuation of Nonconforming Signs. For each nonconforming sign registered with the Building Official pursuant to subsection B of this section, the board shall determine and file with the central appraisal district the compensable cost value of the sign as required by 216.011 of the Texas Local Government Code.

3. Relocation, Reconstruction or Removal of Nonconforming Signs. The city council may require the relocation, reconstruction or removal of any nonconforming sign and if the city council shall order such relocation, reconstruction or removal, the owner of the nonconforming sign or, in an appropriate case, the owner of the real property upon which such sign was located, shall be compensated in an amount determined by the municipal board on sign control not to exceed the compensable cost required under Section 4 of Article 1015o, V.A.C.S.

##### **D. General Provisions.**

1. Subject to the provisions set forth in this chapter, nonconforming signs may be continued and maintained after the effective date of the ordinance codified in this chapter, provided that no nonconforming sign shall be:

a. Changed to or replaced with another sign, including changing the sign face. Provided, however, that this provision shall not apply to the copy on electronically changeable copy signs and billboards. Also provided, that this restriction shall not apply to a change made by the original or subsequent owners to the face of an existing sign that is structurally safe, and for which there is on file with the Building Official either a valid permit or non-conforming registration;

b. Structurally altered in order to extend its useful life;

c. Expanded;

d. Reestablished after damage or destruction of more than sixty percent of its value at the time of such damage or destruction;

e. Modified or relocated in any way that would increase the degree of nonconformity of such sign.

2. This provision shall not prevent repairing or restoring any part of a sign structure to a safe condition or performing normal maintenance operations on a sign or sign structure.