

ORDINANCE B-714

AN ORDINANCE AMENDING CHAPTER 5, CONSTRUCTION CODES, OF THE BURLESON CODE OF ORDINANCES BY ESTABLISHING ARTICLE VI, MASONRY CONSTRUCTION; PROVIDING DEFINITIONS; PROVIDING FOR EXCEPTED BUILDINGS; PROVIDING A WAIVER PROCEDURE; PROVIDING NOTICE REQUIREMENTS FOR WAIVER REQUESTS; PROVIDING FOR INJUNCTIVE RELIEF; MAKING THIS ORDINANCE CUMULATIVE OF PRIOR ORDINANCES; REPEALING ALL ORDINANCES OF THE CITY OF BURLESON IN CONFLICT HEREWITH; PROVIDING A SEVERABILITY CLAUSE; PENALTY CLAUSE; AND PROVIDING AN EFFECTIVE DATE CLAUSE..

WHEREAS, the City of Burleson is a general purpose unit of government located in Tarrant and Johnson Counties created under and operating pursuant to the Home Rule Laws of the State of Texas; and

WHEREAS, the City of Burleson, in order to meet its police power responsibilities in providing the quality and character of environment desired by its citizens, has determined that it is reasonable and necessary to establish appropriate regulations governing the types of exterior wall construction utilized for buildings located within the corporate limits of the City of Burleson;

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

That Chapter 5, Construction Codes of the Burleson Code of Ordinances is hereby amended by adding a new Article VI that shall read as follows:

Article VI, Masonry Construction

Sec. 5-160. Definitions

Barn shall mean a building intended to house agricultural products, agricultural equipment and/or livestock.

Building shall mean any structure (excluding fences) built for the support, shelter and enclosure of persons, animals, chattels, or movable property of any kind.

Building, accessory shall mean a detached, subordinate building which is clearly incidental and secondary to the primary building or use located on a premise and which does not change the character thereof, including but not limited to garages, carports, bathhouses, greenhouses, tool sheds, barns and caretaker's or guard's residences.

Building, nonresidential shall mean any building utilized for any use other than a single family, two-family, and multiple family

dwelling, and related accessory uses as described in the zoning ordinance as amended and adopted by the City.

Building Official shall mean the designated City official carrying the title of Building Official, or the designated representative of that official who is charged with the responsibility of issuing building permits and certificates of occupancy.

Building, primary shall mean any building located on a premise that is occupied by the primary use to which the property is devoted.

Building, residential shall mean any building utilized for a single family, two-family, and multiple family dwelling, or related accessory use as described in the City's zoning ordinance as amended and adopted by the City.

Building Code shall mean the International Building and International Residential Codes as amended and adopted by the City.

City shall mean the City of Burleson.

Director of Community Development shall mean the person who has been appointed to the position of Director of the Community Development Department or that person's duly authorized representative.

Glass construction materials shall mean, but not be limited to, fixed glass panels, glass curtain wall construction as defined by the building code, and glass block.

Masonry shall mean and include brick, stucco, concrete, concrete tilt wall, stone, rock, or other masonry or materials of equal characteristics. For the purposes of this ordinance, the following materials and applications shall not be considered to be masonry construction:

1. fiber reinforced cementitious boards or panels designed to be attached directly to studs or sheathing by nails, screws or other types of mechanical connectors shall not be considered to be masonry construction;
2. Concrete masonry units (CMU);
3. Exterior insulating finish system (EFIS) or similar applications.

Non-residential zoning districts shall mean all zoning districts established by the zoning ordinance as amended and adopted by the

City that are primarily intended for commercial or industrial development and use.

Replacement cost shall mean the cost of replacing an existing building with a comparable building. Replacement cost shall be based on the insured value of a building. In the case of uninsured buildings, replacement cost shall be based on value as rendered in the most current county appraisal district tax roll.

Residential zoning districts shall mean all zoning districts established by the zoning ordinance as amended and adopted by the City that are intended for residential development and use.

Zoning ordinance shall mean the zoning ordinance adopted by the City.

Sec. 5-161. Exterior masonry requirements

A. Buildings located in residential zoning districts

1. Except as provided in paragraphs 2 through 7 below, all primary buildings constructed in residential zoning districts shall have all first floor exterior walls constructed of a masonry material covering at least seventy-five percent (75%) of said walls, exclusive of all windows, doors, roofs, glass construction materials, or sidewalk and walk-way covers.
2. Rear walls of multi-story primary buildings located on double frontage lots shall have exterior walls constructed of a masonry material covering at least seventy-five percent (75%) of said walls, exclusive of all windows, doors, roofs, glass construction materials, or sidewalk and walk-way covers.
3. Within the Old Town Overlay District, exterior walls of primary buildings constructed for use as single-family or two family homes may be constructed of any material allowed by the Building Code, other than metal.
4. Within Agricultural (A) zoning districts, exterior walls of primary buildings constructed for use as single-family or two family homes may be constructed of any material allowed by the Building Code, other than metal.

5. Within manufactured housing dwelling (MH) zoning districts, exterior walls of primary buildings constructed for use as single-family homes may be constructed of any material approved for a HUD-Code manufactured home.
6. Within existing residential neighborhoods in which at least fifty percent (50%) of existing homes do not comply with the provisions of this ordinance, exterior walls of primary buildings constructed, or reconstructed for use as single-family or two family homes may be constructed of any material allowed by the Building Code, other than metal. In platted additions, boundaries of the recorded plat shall constitute neighborhood boundaries. In unplatted neighborhoods, boundaries may be established either by survey tract, or bordering collector or arterial roadways.
7. Accessory buildings constructed within residential zoning districts
 - a. Accessory buildings that are located behind a primary building and that do not exceed one-hundred (100) square feet may have exterior walls constructed of any material allowed by the Building Code;
 - b. Accessory buildings that are located behind a primary building and that exceed one-hundred (100) square feet, but do not exceed two-hundred forty (240) square feet may have exterior walls constructed of any material allowed by the Building Code, other than metal;
 - c. Accessory buildings that are located behind a primary building and that exceed two-hundred forty (240) square feet, shall have all exterior walls which face and are visible from a public street constructed of a masonry material covering at least seventy-five (75%) of said walls, exclusive of all windows, doors, roofs, glass construction materials, or sidewalk and walk-way covers.
 - d. Barns and residential accessory buildings located in Agricultural (A) zoning districts may be constructed of any material allowed by the Building Code.

- e. Within the Old Town Overlay District, and within existing residential neighborhoods in which at least fifty percent (50%) of existing homes do not comply with the provisions of this ordinance, residential accessory buildings that are located behind a primary building and that exceed one-hundred (100) square feet, may have exterior walls constructed of any material allowed by the Building Code, other than metal.

B. Buildings located in non-residential zoning districts other than Industrial zoning districts

1. Primary buildings located in non-residential zoning districts shall have exterior walls constructed of masonry material covering at least seventy-five percent (75%) of said walls, exclusive of all windows, doors, roofs, glass construction materials, or sidewalk and walkway covers.
2. Except as provided for by Section 5-161.E of this ordinance, accessory buildings in non-residential zoning districts that are located behind a primary building and without exterior walls fronting on any street may have exterior walls constructed of any material allowed by the Building Code. All other accessory buildings shall have exterior walls constructed of masonry material covering at least seventy-five percent (75%) of said walls, exclusive of all windows, doors, roofs, glass construction materials, or sidewalk and walkway covers.

C. Buildings located in Industrial zoning districts

1. Except as provided for by Section 5-161.E of this ordinance, primary and accessory buildings constructed on property zoned Industrial (I) may be constructed of masonry materials, wood, glass, or decorative metal (non-galvanized finish).

D. Buildings located in PD zoning districts:

Buildings located within a Planned Development zoning district may have exterior walls constructed of any materials allowed by the Building Code and specified in development standards approved by City Council in accordance with applicable provisions of the zoning ordinance as amended and adopted by the City.

Unless otherwise specified by development standards approved by City Council, the exterior walls of all buildings located in a Planned Development zoning district shall be constructed as follows:

1. Primary buildings intended for use as single-family, two-family or multi-family dwellings shall be constructed in accordance with the provisions of Section 5-161.A.1 and 5-161.A.2.

2. Buildings that are accessory to primary single-family, two-family or multi-family dwellings shall be constructed in accordance with the provisions of Section 5-161.A.7.
 3. Primary buildings intended for any use other than single-family, two-family or multi-family dwellings shall be constructed in accordance with the provisions of Section 5-161.B.1.
 4. Buildings that are accessory to primary buildings intended for any use other than single-family, two-family or multi-family dwellings shall be constructed in accordance with the provisions of Section 5-161.B.2.
- E. Buildings located adjacent to minor arterials, principle arterials or thoroughfares

With the exception of barns and storage buildings located in Agricultural (A) zoning districts, nonresidential buildings located within 300 feet of the right-of-way lines of any roadway designated as a minor arterial, principle arterial or thoroughfare by the City of Burleson Thoroughfare Plan shall have exterior walls constructed of at least seventy-five percent (75%) masonry material exclusive of all windows, doors, roofs, glass construction materials, or sidewalk and walk-way covers. Location shall be determined by measuring the distance between the right-of-way line and the building foundation at the point of closest proximity to said right-of-way line.

Sec. 5-162. Excepted buildings

Where a building lawfully exists at the effective date of adoption or amendment of this ordinance and said building could not be built under the terms of this ordinance, it may continue so long as it remains otherwise lawful, subject to the following provisions:

- A. The building may be maintained and as necessary, repaired using materials comparable to those materials that are being replaced except that the cost of said repairs shall not within any twelve (12) month period, exceed fifty percent (50%) of said building's replacement cost.

B. The building may be enlarged or altered while still maintaining its excepted status except that the cost of said enlargement or alteration shall not within any twelve (12) month period, exceed fifty percent (50%) of said building's replacement cost.

C. Should the building be destroyed by any means to an extent of more than fifty percent (50%) of its replacement cost at the time of reconstruction, it shall not be reconstructed except in conformity with the provisions of this ordinance.

D. Should the building be moved for any reason for any distance whatever, it shall thereafter conform to the regulations of the zoning district in which it is located after it is moved.

Sec. 5-163. Repairs, enlargement and alterations exceeding fifty percent of replacement cost

Upon receipt of a building permit application for repair, alteration or addition to an excepted building, the building official shall examine the construction documents and prepare a written determination regarding the value of the proposed work. If it is determined that the value of the proposed work exceeds fifty percent (50%) of said building's replacement cost, the building official shall provide the determination to the permit applicant. The notice provided to the permit applicant shall specify the construction document modifications required to bring the building into compliance with the terms of this ordinance. Said notice shall also inform the permit applicant of the right to apply for a waiver to the requirements of this ordinance as provided for by Section 5-164 below.

Sec. 5-164. Waivers

The City Council, upon application duly filed by the applicant and after a public hearing, may grant a waiver from the terms of this ordinance and the requirements set forth herein upon an affirmative vote of a majority of the City Council members present and voting on such waiver. The application for a waiver shall set forth in specific language the grounds or reasons upon which such waiver request is being made.

In granting any waiver, the City Council may consider any of the following factors:

A. Historical significance of a building;

- B. Architectural significance or interest of a building;
- C. Character of the surrounding area;
- D. Any other factor deemed to be appropriate by the City Council.

The terms and conditions of the waiver, if granted, shall be noted by minute order. In the event that a waiver application is denied by the City Council, no other waiver of like kind submitted by the applicant shall be considered or acted upon by the City Council upon the same building or proposed building for a period of six (6) months subsequent to said denial.

Sec. 5-165 Public notice requirements

Upon application being made for a waiver under Section 5-164 above, the Director of Community Development office shall cause notices to be mailed by United States mail, return receipt requested, not less than fifteen (15) days prior to the public hearing, to all those property owners (as their ownership appears in the most current tax rolls for the City of Burleson) whose property is located within 200 feet of any portion of the boundaries of the property for which the waiver has been requested. In addition, such notice shall be published at least fifteen (15) days prior to the public hearing in the official newspaper of the City of Burleson.

Sec. 5-166. Waiver application fee

At the time the waiver application is filed with the Community Development Director, the applicant shall pay a fee as established by the City of Burleson Fee Schedule. This fee shall not be refundable regardless of the disposition of the application.

Sec. 5-167. Injunctive relief

- A. The City shall have and retain the right for injunctive relief against any person, firm or corporation who is in the process of or about to violate any section, paragraph, or part of this ordinance. Such right for injunctive

relief shall exist independent of the other penalty provisions of this ordinance and not in lieu thereof.

- B. The right of injunctive relief is essential to the City in order that it may maintain an orderly and properly planned control over all buildings thus protecting the health, morals, safety and well being of the citizens and halting any attempt by any person, firm or corporation to inflict temporary or permanent injury on the general public by a failure to comply with the terms of this ordinance.

Sec. 5-168. Severability

If any article, section, sub-section, sentence or phrase of this Ordinance should be held to be invalid for any reason whatsoever, such invalidity shall not affect the remaining portions of this Ordinance which shall remain in full force and effect and to this end the provisions of this Ordinance are declared to be severable.

Sec. 5-169. Penalty

Any person, firm, association of persons, company, corporation, or their agents, servants, or employees violating or failing to comply with any of the provisions of this article shall be fined, upon conviction, not less than one dollar (\$1.00) nor more than five-hundred dollars (\$500.00), and each day any violation of noncompliance continues shall constitute a separate and distinct offense. The penalty provided herein shall be cumulative of other remedies provided by State Law, and the power of injunction as provided in V.T.C.A. Local Government Code 54.012 and as may be amended, may be exercised in enforcing this article whether or not there has been a complaint filed.

Sec. 5-170. Effective date

This Ordinance shall be in full force and effect from and after its passage and publication as provided by law.

PASSED AND APPROVED this the 22nd day of April, 2004.

Ordinance B-714
Page 11 of 11

MAYOR

ATTEST:

City Secretary

First Reading: _____