



DATE: February 6, 2024
TO: Honorable Mayor & City Council
FROM: Planning & Zoning Commission
VIA: Mike Bell, AICP, Development Review Manager acting as Secretary of the Planning & Zoning Commission
Christina D. Day, AICP, Director of Planning 
SUBJECT: Results of Planning & Zoning Commission Meeting of February 5, 2024 

AGENDA ITEM NO. 5B - ZONING CASE 2023-019
PETITIONER: CITY OF PLANO

Request to amend various sections of the Zoning Ordinance pertaining to recent state legislative actions and to ensure compliance with state law, including amendments related to SB 929. Tabled on January 2, 2024. Project #ZC2023-019.

APPROVED: 7-0

Speaker Card(s) Received:	Support: <u>0</u>	Oppose: <u>0</u>	Neutral: <u>0</u>
Petition Signatures Received:	Support: <u>0</u>	Oppose: <u>0</u>	Neutral: <u>0</u>
Other Responses:	Support: <u>0</u>	Oppose: <u>0</u>	Neutral: <u>0</u>

Commissioner Bronsky was not in attendance.

RESULTS:

The Commission recommended approval of the item as shown in Exhibit A.

To view the hearing, please click on the provided link:
<https://planotx.new.swagit.com/videos/296510?ts=4931>

RK/kob

cc: Eric Hill, Assistant Director of Planning
Christina Sebastian, Land Records Planning Manager
Melissa Kleineck, Lead Planner
Justin Cozart, Sr. GIS Technician
Jeanna Scott, Building Inspections Manager
Dorothy Alatorre, Sr. Administrative Assistant - Neighborhood Services

AGENDA ITEM NO. 5B

PUBLIC HEARING: Zoning Case 2023-019

PETITIONER: City of Plano

CASE PLANNER: Robyn Kirk, AICP

DESCRIPTION: Request to amend various sections of the Zoning Ordinance pertaining to recent state legislative actions to ensure compliance with state law, including amendments related to SB 929. Tabled on January 2, 2024. Project #ZC2023-019.

SUMMARY:

The purpose of this request is to amend the Zoning Ordinance to align with recently adopted Texas statutes. The amendments will ensure compliance with state law and are in conformance with the recommendations of the Comprehensive Plan. Staff recommends approval as noted in the following recommendation section.

STAFF PRELIMINARY REPORT – REMARKS

Background

A number of state requirements were recently passed with impacts to the Zoning Ordinance. Due to the extent of changes required under the 88th Texas Legislative session, the amendments were split into three Zoning Ordinance amendment cases. On July 17, 2023 ([staff report](#) | [video](#)), the Planning & Zoning Commission (Commission) recommended approval of Zoning Case 2023-010 to establish a process for determining nonconforming uses. On August 7, 2023 ([staff report](#) | [video](#)), the Planning & Zoning Commission recommended approval of Zoning Case 2023-012 regarding changes related to several recent bills and called an additional public hearing for this zoning case to consider further Zoning Ordinance amendments, including amendments related to SB 929.

The proposed Zoning Ordinance amendments are shown in Exhibit A and relate to the following requirements:

- [House Bill 1750](#) (HB 1750) and [House Bill 2308](#) (HB 2308): HB 1750 protects the operation of veterinary services as part of agricultural operations. This bill does not allow a municipality to prohibit a generally accepted agricultural practice. HB 2308 similarly protects kennels or commercial pet sitting as part of agricultural improvements when these uses are associated with agricultural land.
- [Senate Bill 929](#) (SB 929): SB 929 details procedures and noticing standards for when a nonconforming use is created and when a municipality requires a nonconforming use to stop, including procedures for amortization or buyouts. The procedure for determining a nonconforming use was adopted as part of Zoning Case 2023-010, while the noticing requirements were adopted as part of Zoning Case 2023-012. The additional changes proposed with this amendment focus on the process for amortization or buyouts.
- Texas Administrative Code [Rule 61.1031](#): Updates to the Texas Administrative Code [Rule 61.1031](#) relating to school safety requirements have prompted staff to revisit school fencing requirements.
- As part of Zoning Case 2023-012, the Zoning Ordinance was updated to revisit changes stemming from [House Bill 2439](#) (HB 2439), the Materials Bill, from the 2019 Legislative Session (86th Texas Legislature). Additional regulations need to be updated to comply with these standards.

[House Bill 1750](#) and [House Bill 2308](#) (Exhibit B)

HB 1750 prohibits municipalities from imposing a governmental requirement that applies to agricultural operations unless the requirement is necessary to protect from imminent danger, which must be in the form of a resolution based on a report conducted by a city health officer or a consultant. HB 2308 (Exhibit C) does not allow a municipality to regulate an agricultural improvement located on agricultural land, including pens for sheltering or feeding of animals (kennels/commercial pet sitting), unless the regulation is adopted and meets the requirements of HB 1750. Both bills add veterinary services to the definition of agricultural operation.

Due to the restrictions under these bills, staff proposes allowing veterinary clinic, kennel (indoor pens)/commercial pet sitting, and kennel (outdoor pens) uses in all zoning districts when part of an agricultural operation. Additionally, a new section, 14.700, is proposed to permit agricultural operations as allowed by state law as a general reference to the law.

[Senate Bill 929](#) (Exhibit D)

This bill provides for an amortization or buyout and appeal processes if a nonconforming use is required to stop operating by the municipality.

The procedure for stopping a nonconforming use and associated amortization process is proposed to be added to Article 7 (Nonconformities) to comply with this new state law. Additionally, the language in Article 5 (Variances and Appeals of Administrative Decisions) regarding amortization is proposed to be simplified to refer to the procedures in Article 7. This will eliminate any conflicts in language.

Of note, due to the nature of the proposed changes, no uses are made nonconforming through these amendments. Therefore, the additional notice requirements of SB 929 do not apply to this case.

[Texas Administrative Code Rule 61.1031](#) (Exhibit E)

New rules concerning school facilities [were adopted in May 2023](#) to ensure minimum school safety standards. Adopted new subsection (a) establishes definitions for the rule, including a definition for “exterior secured area,” which details fence height and design requirements. An exterior secured area enclosed by a fence or wall must utilize a fence or wall at least six feet in height with design features that prevent it from being easily scalable or must be a minimum of eight feet in height.

Article 20 (Screening, Fence and Wall Regulations) currently limits a fence or wall located in the front yard of a property used for public and parochial schools, private and primary schools, and day care centers to 60 inches. It is proposed that this requirement be increased to eight feet to comply with the Texas Administrative Code.

[House Bill 2439](#) (Exhibit F)

This bill, passed in 2019 by the 86th Texas Legislature, impacted a municipality’s authority to regulate building materials or products on a building’s facades. The bill restricted municipalities from prohibiting any building product or material allowed by a national model code published within the last three code cycles. However, two exceptions could apply to Plano’s zoning regulations:

1. The building is identified as either a landmark or located in an area designated as a national, state, or local historic district.
2. As a Certified Local Government, Plano may regulate exterior materials on buildings located in a place or area designated for historical, cultural, or architectural importance and significance under zoning.

As the full impacts of the bill were unclear at the time and still being debated amongst city officials across the state, Plano focused on adopting mitigating requirements through Zoning Case 2019-011 to lessen the impacts of legislation and offer an alternative incentive if developers or owners chose to

follow building material standards. In the years since this bill became effective, cities around the Metroplex have conceded to allow only materials permissible under code.

General material standards were removed as part of Zoning Case 2023-012 to comply more closely with state law and the operations of other cities. However, some specific zoning districts are recommended for updates with this amendment.

Additional Amendment

The submission process for site plan reviews under Article 3 is also proposed to be updated to be consistent with changes made under companion item 5A, Subdivision Ordinance Amendment 2023-003. This change will continue to allow site plans and plats for the same development project to keep the submission dates synchronized for the purposes of reviewing the project.

STAFF PRELIMINARY REPORT – CONFORMANCE TO THE COMPREHENSIVE PLAN

The proposed request has been reviewed for conformance with the Comprehensive Plan.

Guiding Principles – The set of [Guiding Principles to the Comprehensive Plan](#) establishes overarching themes that apply to all policies and actions and express values for Plano Today, Plano 2050, and Plano Together. Since the principles do not stand alone but are used in concert with one another and carry across the Plan as a whole, each principle must be judged through a lens that incorporates all other principles to be fully and accurately understood. As such, the Commission is encouraged to review the full list of Guiding Principles and judge zoning requests through the lens of all principles.

Land Use Action 1 (LU1) – *Review and evaluate the Zoning Ordinance and make appropriate amendments based on guidance from the Comprehensive Plan.*

The proposed amendments will ensure compliance with state law. This request is in conformance with this action statement.

STAFF PRELIMINARY REPORT – SUMMARY & RECOMMENDATION

SUMMARY:

The purpose of this request is to amend the Zoning Ordinance to align with recently adopted Texas statutes. The amendments will ensure compliance with state law and are in conformance with the recommendations of the Comprehensive Plan. Staff recommends approval as noted in the recommendation section below.

RECOMMENDATION:

Recommended for approval as shown in Exhibit A (additions are indicated in underlined text; deletions are indicated in ~~strikerough~~ text).

Zoning Case 2023-019 Draft Standards

Additions are indicated in underlined text; deletions are indicated in ~~strikethrough~~ text.

Amend Part B of Subsection 3.100.5 (Submission of Applications) of Section 3.100 (General) of Article 3 (Site Plan Review), such part to read in its entirety as follows:

- B.** Applications for approval of plans required by this article must be submitted to the City of Plano Planning Department. The Planning Department shall publish at least 30 days prior to the beginning of each year a calendar of official submittal dates. This calendar will generally specify two submittal dates for each calendar month, and must specify one submittal date for each calendar month. An application is considered submitted on the first submittal date on or after the date that: 1) the fee is paid; 2) other requirements permitted by law are met; and 3) the applicant delivers the application to the City of Plano Planning Department or deposits the application with the United States Postal Service by certified mail addressed to the City of Plano Planning Department. The date on which the application is submitted shall constitute the filing date for the site plan. ~~A calendar of official submittal dates for items requiring Planning & Zoning Commission approval shall be published by the city 30 days prior to the beginning of each year. All applications received on a date other than an official submittal date shall be scheduled for consideration on the next official submittal date. An application or plan is considered filed on the date the applicant delivers the application or plan to the City of Plano Planning Department or deposits the application or plan with the United States Postal Service by certified mail addressed to the City of Plano Planning Department. Complete applications requiring Planning & Zoning Commission approval shall be placed on the meeting agenda of the Planning & Zoning Commission no later than 28 days following the official date of submittal. Items authorized for staff approval only may be submitted at any time during normal office hours. Complete applications authorized for staff approval shall be acted upon by the Director of Planning or designee within 21 days. (See Sec. 3.900)~~

Amend Subsection 5.200.3 (Amortization) of Section 5.200 (Jurisdiction) of Article 5 (Variances and Appeals of Administrative Decisions), such subsection to read in its entirety as follows:

.3 Payment for Termination of Nonconforming Use or Amortization

~~Require the discontinuance of nonconforming uses of land or structure under any plan whereby the full value of the structure and facilities can be amortized within a definite period of time, taking into consideration the general character of the neighborhood and the necessity for all property to conform to the regulations of this ordinance. All actions to discontinue a nonconforming use of land or structure shall be taken with due regard for the property rights of the persons affected when considered in the light of the public welfare and the character of the area surrounding the designated nonconforming use and the conservation and preservation of property. The Board of Adjustment shall, from time to time, on its own motion or upon cause presented by interested property~~

Zoning Case 2023-019 Draft Standards

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~~owners, inquire into the existence, continuation, or maintenance of any nonconforming use within the city.~~

A. Hear and decide appeals of:

- i. The amount of payment determined under Section 7.700.3, and
- ii. The period of continued use determined under Section 7.700.4.

B. The city has the burden of proof to establish the correctness of its determination under Sections 7.700.3 and 7.700.4 at such hearing on the appeal.

Amend Article 7 (Nonconformities), such article to read in its entirety as follows:

7.100 Nonconforming Status

Nonconforming status shall exist under the following provision of this ordinance:

- .1 When a use or structure, which does not conform to the regulations prescribed in the district in which such use or structure is located, was in existence and lawfully operating prior to August 27, 1956, and has been operating without discontinuance.
- .2 When on the effective date of this ordinance the use or structure was in existence and lawfully constructed, located and operating in accordance with the provisions of the prior zoning ordinance or which was a nonconforming use there under, and which use or structure does not now conform to the regulations herein prescribed for the district in which such use or structure is located.
- .3 When a use or structure, which does not conform to the regulations, prescribed in the district in which such use or structure is located was in existence at the time of annexation to the City of Plano and has since been in regular and continuous use.

7.200 Continuance

~~A person using a property in a manner considered to be a nonconforming use as a result of the adoption of or change to a zoning regulation or boundary may continue (for indefinite periods of time) to use the property in the same manner unless required by the city to stop the nonconforming use of the property.~~

Any nonconforming use of land or structure may be continued for indefinite periods of time, except nonconformities may be terminated as described in Sections 7.600, 7.700, and 7.800.

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7.300 Change of Use

The Building Official, in consultation with the Director of Planning, may grant a change of occupancy from one nonconforming use to another, providing the use is within the same, or higher or more restricted classification as the original nonconforming use. In the event a nonconforming use of a building may be changed to another nonconforming use of more restricted classification, it shall not later be changed to a less restrictive classification of use and the prior less restrictive classification shall be considered to have been abandoned.

7.400 Residential Uses in Nonresidential Zoning Districts

Existing residences, including but not limited to single-family, multifamily, and independent living facilities, located in nonresidential districts may be improved, maintained, or rebuilt as conforming structures.

7.500 Loss of Nonconforming Status

- .1 Notwithstanding any other provisions of this ordinance, if a nonconforming use on a particular parcel shall cease operation for a period of more than 6 months, then such nonconforming use shall be deemed to be permanently abandoned and shall not be re-instituted on that parcel or any other parcel in any district which does not permit the discontinued use. For the purposes of this paragraph, to “cease operation” shall mean to intentionally abandon the nonconforming use. The temporary suspension of a use shall not constitute abandonment, provided the property is not used during the period of suspension for any other purpose. The preceding provision shall apply in all cases except those specified for the RT district.
- .2 If (1) a nonconforming structure or (2) a structure occupied by a nonconforming use is destroyed, it may not be rebuilt unless the structure or use can conform to the provisions of this ordinance. For purposes of this section, a structure is destroyed if it has suffered damage, neglect, disrepair, or impairment in excess of 60% of its reasonable value. If such a structure is not destroyed, reconstruction will be permitted, but the size or function of the nonconforming structure, or any nonconforming use occupying the structure, cannot be expanded. The preceding provision shall apply in all cases except for those specified for UR, RT, and CC districts.

7.600 Stopping Nonconforming Use Status

City Council may order a nonconforming use to stop as follows:

- .1 A City Council member uses the city’s regular process to place an item on a Council meeting agenda.
- .2 During that meeting, the Council votes as to whether they wish to proceed with full deliberation of the matter at a future meeting or terminate the discussion of the matter.

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- .3 If the Council determines to proceed, the matter will be agendized at a future meeting for full deliberation and a possible order that the nonconforming use stop. The order shall be made by adoption of a resolution. The date of the resolution is the date of the action by Council to adopt.

7.700 Process Following City Council Order to Stop a Nonconforming Use

- .1 The City must notify the property owner or lessee of the property, as indicated by the most recently approved municipal tax roll, not later than the 10th day after the date of the resolution. Notice must include a copy of the resolution and a description of the remedies, either payment or continued use, which an owner or lessee is entitled to under state law.
- .2 Not later than the 30th day after the date the city gives notice, the property owner or lessee must respond in writing to the city indicating the remedy, either payment or continued use, chosen by the owner or lessee. If the city does not receive timely notice from an owner or lessee, the city may choose the remedy, as provided by state law.
- .3 If the owner or lessee elects payment, or the city chooses payment after the owner or lessee fails to timely respond under Section 7.700.2, then the city will hire an appraiser and follow the requirements of state law to determine the appropriate payment. A city official will notice the owner or lessee of the amount of the payment and simultaneously pay the owner or lessee. The person receiving payment must stop the nonconforming use not later than the 10th day after the date of the payment.
- .4 If the owner or lessee elects continuing use, or the city chooses continuing use after the owner or lessee fails to timely respond, then the city will hire an expert and follow the requirements of state law to determine the appropriate amount and therefore, the period of time for the use to continue before it is terminated. The city will notice the owner or lessee of the appropriate amount and time determined by the expert. The person must stop the nonconforming use at the determined time.
- .5 A person entitled to payment or continuing use may appeal the determination by the appraiser or expert to the Board of Adjustment not later than the 20th day after the date of the notice of the determination of the amount or the period of time as described in subsection .3 or .4 above.
- .6 Continued use, apportionment, and appeal of the Board of Adjustment's determination is as described in state law.

Zoning Case 2023-019 Draft Standards

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7.800 Other methods of Terminating a Nonconforming Use or Removal or Relocation of Structures due to Nonconformity

- .1 Nonconforming uses or structures may also be terminated by court order or as otherwise allowed by law.**
- .2 Removal or relocation of structures due to nonconformity is at the discretion of City Council.**

7.900 ~~7.600~~ Determination of Nonconforming Status and Administrative Official Decision

The process for determination of nonconforming status is overseen by the Director of Planning. In their absence, a designee may be appointed.

.1 Informal Determination

City staff makes initial, informal determinations of whether a nonconforming use or structure exists under the provisions of the Zoning Ordinance. The informal determination is not appealable, and is considered valid unless a formal decision is requested.

.2 Formal Decision

The property owner may request a formal decision as to whether a nonconforming use or structure exists on their property from the Director of Planning.

- A.** The Director of Planning will meet with the requesting property owner, tenant, or designated representative within twenty (20) business days of the date on which the request for a formal decision was filed with the Director of Planning, unless otherwise agreed by the parties.
- B.** Based upon the evidence presented at such meeting, the Director of Planning will provide a formal, written decision within twenty (20) business days. The formal decision and related evidence are public records.

.3 Appeal

The formal decision of the Director of Planning may be appealed to the Board of Adjustment under Article 5 of this Ordinance.

Amend Subsection 9.1200.4 (Special District Requirements) of Section 9.1200 (GR, General Residential District) of Article 9 (Residential Districts), such portion of the subsection to read as follows:

.4 Special District Requirements

The Douglass Community is a unique location which is of architectural and cultural importance to the community, and has special elements that should be maintained

Zoning Case 2023-019 Draft Standards

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to perpetuate the long-term character and viability of the community. The following provisions are required for that purpose:

...

Amend Subsection 10.800.3 (Area, Yard, and Bulk Requirements) of Section 10.800 (BG, Downtown Business/Government District) of Article 10 (Nonresidential Districts), such portions of the subsection to read as follows:

Description	Commercial and Multifamily Requirement	Single-Family Attached Requirement
...		
Maximum Height	4 story (except as noted in Other Height/Setback Requirements below).	3 story, 50 feet
	Four stories of multifamily are permitted on a horizontal structural concrete podium above a single level at grade of structured parking, and/or nonresidential uses and/or flex space units (below-grade parking is excluded). Flex space units are defined as a ground floor unit that may be occupied by a residential use, a nonresidential use, or both. Flex space units must have an individual exterior entrance and a minimum floor-to-ceiling separation of 9 feet. A flex-space unit must be constructed to accommodate nonresidential uses and may not be modified to prevent nonresidential occupancy.	
	The maximum height for parking structures shall be 5 levels at or above grade. Parking structures shall be obscured from view of streets and/or public ways designated as Downtown Couplet or Gateway Corridor on the Thoroughfare Plan Map, plus 15th Street by buildings of equal or greater height and/or special architectural and/or landscaping treatments approved in conjunction with a preliminary site plan or site plan.	
...		

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Amend Part B of Subsection 10.1100.6 (Special District Requirements) of Section 10.1100 (RC, Regional Commercial District) of Article 10 (Nonresidential Districts), such part to read in its entirety as follows:

- ~~B. At least 80% of any exposed exterior wall of main buildings, parking structures, and accessory buildings shall consist of glass, native stone, clay-fired brick or tile, or a combination of these materials. All exterior building materials made of glass shall have a maximum exterior visible reflectance of 20%. Other finishes and materials may be used at the sole discretion of the Planning & Zoning Commission if adopted as part of the site plan approval and if permitted by building and fire codes. Any finish and material permitted by building and fire codes and Article 23 may be used on the remaining 20% of any exposed exterior wall, except that for buildings 55 feet in height and over this percentage may be increased to 50% for use of metal only. The Planning & Zoning Commission may allow, at its sole discretion, the use of cast concrete, concrete block, and tile, as described in the City of Plano Building Code on exterior walls that are not visible from public thoroughfares. These finishes must be consistent in color with the remainder of the building. These would include the walls of service courts and other facilities that are secluded from view by the specific design of a building, or group of buildings. [Reserved]~~

Amend Subpart A.ii of Part A of Subsection 10.1200.6 (Special District Requirements) of Section 10.1200 (RE, Regional Employment District) of Article 10 (Nonresidential Districts), such subpart to read in its entirety as follows.

- ~~ii. At least 80% of any exposed exterior wall of main buildings, parking structures, and accessory buildings shall consist of glass, native stone, clay-fired brick or tile, or a combination of these materials. All exterior building materials made of glass shall have a maximum exterior visible reflectance of 20%. Other finishes and materials may be used at the sole discretion of the Planning & Zoning Commission if adopted as part of the site plan approval and if permitted by building and fire codes. Any finish and material permitted by building and fire codes and Article 23 may be used on the remaining 20% of any exposed exterior wall, except that for buildings 55 feet in height and over this percentage may be increased to 50% for use of metal only. The Planning & Zoning Commission may allow, at its sole discretion, the use of cast concrete, concrete block, and tile, as described in the City of Plano Building Code on exterior walls that are not visible from public thoroughfares. These finishes must be consistent in color with the remainder of the building. These would include the walls of service courts and other facilities that are secluded from view by the specific design of a building, or group of buildings. [Reserved]~~

Zoning Case 2023-019 Draft Standards

Additions are indicated in underlined text; deletions are indicated in ~~strike~~through text.

Amend Section 14.100 (Residential Districts Use Table) of Article 14 (Allowed Uses and Use Classifications), such portions of the section to read as follows:

RESIDENTIAL ZONING DISTRICTS																	
Use Type	Use Category	A - Agricultural	ED - Estate Development	SF-20 - Single-Family Residence-20	SF-9 - Single-family Residence-9	SF-7 - Single-Family Residence-7	SF-6 - Single-Family Residence-6	UR - Urban Residential	PH - Patio Home	SF-A - Single-Family Attached	2F - Two-Family (Duplex)	GR - General Residential	MF-1 - Multifamily-1	MF-2 - Multifamily-2	MF-3 - Multifamily-3	MH - Mobile Home	RCD - Residential Community Design
Farm, Ranch, Garden, or Orchard	EIPS	P <u>56</u>	P <u>56</u>	P <u>56</u>	P <u>56</u>	P <u>56</u>	P <u>56</u>	56 <u>56</u>	P <u>56</u>	P <u>56</u>	P <u>56</u>	P <u>56</u>	P <u>56</u>	P <u>56</u>	P <u>56</u>	P <u>56</u>	P <u>56</u>
Kennel (Indoor Pens)/ Commercial Pet Sitting	Service	S <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>
Kennel (Outdoor Pens)	Service	P <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>
Veterinary Clinic	Service	S <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>	22 <u>22</u>

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Amend Section 14.200 (Nonresidential Districts Use Table) of Article 14 (Allowed Uses and Use Classifications), such portions of the section to read as follows:

NONRESIDENTIAL ZONING DISTRICTS																
Use Type	Use Category	O-1 - Neighborhood Office	O-2 - General Office	R - Retail	LC - Light Commercial	CC - Corridor Commercial	UMU - Urban Mixed-Use	BG - Downtown Business/Government	CB-1 - Central Business-1	CE - Commercial Employment	RC - Regional Commercial	RE - Regional Employment	RT - Research/Technology	LI-1 - Light Industrial-1	LI-2 - Light Industrial-2	NBD - Neighborhood Business Design
Farm, Ranch, Garden, or Orchard	EIPS	<u>P</u> <u>56</u>	<u>P</u> <u>56</u>	<u>P</u> <u>56</u>	<u>P</u> <u>56</u>	<u>P</u> <u>56</u>	<u>56</u>	<u>56</u>	<u>P</u> <u>56</u>	<u>P</u> <u>56</u>	<u>P</u> <u>56</u>	<u>P</u> <u>56</u>	<u>P</u> <u>56</u>	<u>P</u> <u>56</u>	<u>P</u> <u>56</u>	<u>P</u> <u>56</u>
Kennel (Indoor Pens)/ Commercial Pet Sitting	Service	<u>S</u> <u>22</u>	<u>S</u> <u>22</u>	<u>P</u> <u>22</u>	<u>P</u> <u>22</u>	<u>P</u> <u>22</u>	<u>22</u>	<u>P</u> <u>22</u>	<u>P</u> <u>22</u>	<u>22</u>	<u>P</u> <u>22</u>	<u>P</u> <u>22</u>	<u>22</u>	<u>P</u> <u>22</u>	<u>P</u> <u>22</u>	<u>P</u> <u>22</u>
Kennel (Outdoor Pens)	Service	<u>22</u>	<u>22</u>	<u>22</u>	<u>22</u>	<u>22</u>	<u>22</u>	<u>22</u>	<u>22</u>	<u>22</u>	<u>22</u>	<u>22</u>	<u>22</u>	<u>P</u> <u>22</u>	<u>P</u> <u>22</u>	<u>22</u>
Veterinary Clinic	Service	<u>S</u> <u>22</u>	<u>S</u> <u>22</u>	<u>P</u> <u>22</u>	<u>P</u> <u>22</u>	<u>P</u> <u>22</u>	<u>22</u>	<u>P</u> <u>22</u>	<u>P</u> <u>22</u>	<u>22</u>	<u>P</u> <u>22</u>	<u>P</u> <u>22</u>	<u>22</u>	<u>P</u> <u>22</u>	<u>P</u> <u>22</u>	<u>P</u> <u>22</u>

Amend Section 14.300 (Use Table Notes) of Article 14 (Allowed Uses and Use Classifications), such additional note to read as follows:

Number	End Note
...	...
<u>22</u>	<u>See Sec. 15.1600.</u>
...	...
<u>56</u>	<u>See Sec. 14.700.</u>

Zoning Case 2023-019 Draft Standards

Additions are indicated in underlined text; deletions are indicated in ~~striketrough~~ text.

Amend Article 14 (Allowed Uses and Use Classifications), such additional section to read in its entirety as follows:

14.700 Agricultural Operations

- .1** These regulations are adopted for the purpose of complying with the Texas Agriculture Code, the Federal and Texas Constitutions, and state and federal laws.
- .2** Agricultural operations, as defined in Chapter 251 of the Texas Agriculture Code, are allowed by right in all zoning districts but are otherwise bound by the development regulations of the City of Plano except where specifically exempted by law.

Amend Subsection 15.1400.2 of Section 15.1400 (Superstores) of Article 15 (Use-specific Regulations), such subsection to read in its entirety as follows:

- .2** Building facades that face or front public streets or public ways shall comply with 2 of the 3 criteria listed below. Building facades that do not face or front public streets or public ways shall comply with either Sec. 15.1400.2B or Sec. 15.1400.2C.
 - A.** Covered walkways shall be provided along a minimum of 50% of the facade length. A covered walkway may consist of awnings, roof overhangs, or similar architectural features.
 - B.** No building facade shall exceed a length of 100 feet without a horizontal and vertical break in the facade. The horizontal and vertical break shall be a minimum depth/height of 3 feet for a minimum length of 20 feet.
 - C.** Facades shall contain repeating patterns of contrasting materials, material colors, and or material textures that visually breakup the horizontal and vertical expanse of the facade.

Amend Section 15.1600 (Veterinary Clinics and Kennels (Indoor Pens)/Commercial Pet Sitting) of Article 15 (Use-specific Regulations), such section to read in its entirety as follows:

15.1600 Veterinary Clinics, and Kennels (Indoor Pens)/Commercial Pet Sitting, and Kennels (Outdoor Pens)

- .1** In the O-1 and O-2 districts, A veterinary clinics and kennel (indoor pens)/commercial pet sitting may be permitted in accordance with the use table of Sec. 14.100 and Sec. 14.200, in the O-1 and O-2 districts by a specific use permit only. In these districts, veterinary clinics and kennels (indoor

Zoning Case 2023-019 Draft Standards

Additions are indicated in underlined text; deletions are indicated in ~~striketrough~~ text.

pens)/commercial pet sitting shall meet the following conditions and requirements:

- A.** ~~4~~ Separate customer and service entrances must be provided from exterior building doorways.
 - B.** ~~2~~ Clinics may only be allowed in freestanding, single-occupant buildings or the ground floor of a ~~single- or multistory~~, multi-occupant building.
 - C.** ~~3~~ Disposal of all waste materials shall be in accordance with the Texas Department of Health regulations.
- .2** In all districts, veterinary clinics operated as part of an agricultural operation, as defined in Section 251.002 of the Agriculture Code, as may be amended, and kennels (indoor pens)/commercial pet sitting and kennels (outdoor pens) are permitted when located on agricultural land as defined in Section 251.006 of the Agriculture Code, as may be amended. See also Section 14.700.

Amend Part A of Subsection 20.200.1 of Section 20.200 (General Fence and Wall Regulations) of Article 20 (Screening, Fence and Wall Regulations), such part to read in its entirety as follows:

- A.** For public and parochial schools, private and primary schools, and day care centers, fences and berms may be a combined maximum height of ~~60 inches~~ 8 feet above grade, provided that the fence material is wrought iron or chain link.

1 AN ACT

2 relating to the applicability of certain city requirements to
3 agricultural operations.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. The heading to Chapter 251, Agriculture Code, is
6 amended to read as follows:

7 CHAPTER 251. EFFECT OF NUISANCE ACTIONS AND GOVERNMENTAL
8 REQUIREMENTS ON CERTAIN [~~PREEXISTING~~] AGRICULTURAL OPERATIONS

9 SECTION 2. Sections 251.002(1) and (2), Agriculture Code,
10 are amended to read as follows:

11 (1) "Agricultural operation" includes the following
12 activities:

13 (A) cultivating the soil;

14 (B) producing crops or growing vegetation for
15 human food, animal feed, livestock forage, forage for wildlife
16 management, planting seed, or fiber;

17 (C) floriculture;

18 (D) viticulture;

19 (E) horticulture;

20 (F) silviculture;

21 (G) wildlife management;

22 (H) raising or keeping livestock or poultry,
23 including veterinary services; and

24 (I) planting cover crops or leaving land idle for

1 the purpose of participating in any governmental program or normal
2 crop or livestock rotation procedure.

3 (2) "Governmental requirement" includes any rule,
4 regulation, ordinance, zoning, license or permit requirement, or
5 other requirement or restriction enacted or promulgated by a
6 county, city, or other municipal corporation that has the power to
7 enact or promulgate the requirement or restriction.

8 SECTION 3. Section 251.005(c), Agriculture Code, is amended
9 to read as follows:

10 (c) A governmental requirement of a city:

11 (1) does not apply to any agricultural operation
12 located [situated] outside the corporate boundaries of the city;
13 and

14 (2) applies to an agricultural operation located in
15 the corporate boundaries of the city only if the governmental
16 requirement complies with Section 251.0055 [on the effective date
17 of this chapter. If an agricultural operation so situated is
18 subsequently annexed or otherwise brought within the corporate
19 boundaries of the city, the governmental requirements of the city
20 do not apply to the agricultural operation unless the requirement
21 is reasonably necessary to protect persons who reside in the
22 immediate vicinity or persons on public property in the immediate
23 vicinity of the agricultural operation from the danger of:

24 [(1) explosion, flooding, vermin, insects, physical
25 injury, contagious disease, removal of lateral or subjacent
26 support, contamination of water supplies, radiation, storage of
27 toxic materials, or traffic hazards, or

1 ~~[(2) discharge of firearms or other weapons, subject~~
2 ~~to the restrictions in Section 229.002, Local Government Code].~~

3 SECTION 4. Chapter 251, Agriculture Code, is amended by
4 adding Section 251.0055 to read as follows:

5 Sec. 251.0055. LIMITATIONS ON CITY GOVERNMENTAL
6 REQUIREMENTS APPLICABLE WITHIN CORPORATE BOUNDARIES. (a) A city
7 may not impose a governmental requirement that applies to
8 agricultural operations located in the corporate boundaries of the
9 city unless:

10 (1) there is clear and convincing evidence that the
11 purposes of the requirement cannot be addressed through less
12 restrictive means and that the requirement is necessary to protect
13 persons who reside in the immediate vicinity or persons on public
14 property in the immediate vicinity of the agricultural operation
15 from the imminent danger of:

16 (A) explosion;

17 (B) flooding;

18 (C) an infestation of vermin or insects;

19 (D) physical injury;

20 (E) the spread of an identified contagious
21 disease that is directly attributable to the agricultural
22 operation;

23 (F) the removal of lateral or subjacent support;

24 (G) an identified source of contamination of
25 water supplies;

26 (H) radiation;

27 (I) improper storage of toxic materials;

1 (J) crops planted or vegetation grown in a manner
2 that will cause traffic hazards; or

3 (K) discharge of firearms or other weapons,
4 subject to the restrictions in Section 229.002, Local Government
5 Code;

6 (2) the governing body of the city makes a finding by
7 resolution, based on a report described by Subsection (b), that the
8 requirement is necessary to protect public health; and

9 (3) the requirement is not otherwise prohibited by
10 this section.

11 (b) Before making a finding described by Subsection (a)(2),
12 the governing body of the city must obtain and review a report
13 prepared by the city health officer or a consultant that:

14 (1) identifies evidence of the health hazards related
15 to agricultural operations;

16 (2) determines the necessity of regulation and the
17 manner in which agricultural operation should be regulated;

18 (3) states whether each manner of regulation under
19 Subdivision (2) will restrict or prohibit a generally accepted
20 agricultural practice listed in the manual prepared under Section
21 251.007; and

22 (4) if applicable, includes an explanation why the
23 report recommends a manner of regulation that will restrict the use
24 of a generally accepted agricultural practice that the manual
25 indicates does not pose a threat to public health.

26 (c) A city may not impose a governmental requirement that
27 directly or indirectly:

1 (1) prohibits the use of a generally accepted
2 agricultural practice listed in the manual prepared under Section
3 251.007, except as provided by Subsections (a) and (b);

4 (2) prohibits or restricts the growing or harvesting
5 of vegetation for animal feed, livestock forage, or forage for
6 wildlife management, except as provided by Subsection (d);

7 (3) prohibits the use of pesticides or other measures
8 to control vermin or disease-bearing insects to the extent
9 necessary to prevent an infestation; or

10 (4) requires an agricultural operation be designated
11 for:

12 (A) agricultural use under Section 1-d, Article
13 VIII, Texas Constitution; or

14 (B) farm, ranch, wildlife management, or timber
15 production use under Section 1-d-1, Article VIII, Texas
16 Constitution.

17 (d) A city may impose a maximum height for vegetation that
18 applies to agricultural operations only if:

19 (1) the maximum vegetation height is at least 12
20 inches; and

21 (2) the requirement applies only to portions of an
22 agricultural operation located no more than 10 feet from a property
23 boundary that is adjacent to:

24 (A) a public sidewalk, street, or highway; or

25 (B) a property that:

26 (i) is owned by a person other than the
27 owner of the agricultural operation; and

1 (ii) has a structure that is inhabited.

2 (e) A governmental requirement of a city relating to the
3 restraint of a dog that would apply to an agricultural operation
4 does not apply to a dog used to protect livestock on property
5 controlled by the property owner while the dog is being used on such
6 property for that purpose.

7 (f) A city may require a person to provide a written
8 management plan that meets the specifications described by Section
9 23.521(c), Tax Code, to establish that activities constitute an
10 agricultural operation on the basis of being wildlife management
11 activities.

12 SECTION 5. Chapter 251, Agriculture Code, is amended by
13 adding Sections 251.007 and 251.008 to read as follows:

14 Sec. 251.007. GENERALLY ACCEPTED AGRICULTURAL PRACTICES.
15 The Texas A&M AgriLife Extension Service shall develop a manual
16 that identifies generally accepted agricultural practices and
17 indicates which of those practices do not pose a threat to public
18 health, including a threat to public health posed by a danger listed
19 in Section 251.0055(a)(1).

20 Sec. 251.008. CONFLICT WITH OTHER LAW. If there is a
21 conflict between this chapter and other law, this chapter prevails.

22 SECTION 6. Sections 251.005(c-1) and (c-2), Agriculture
23 Code, are repealed.

24 SECTION 7. As soon as practicable after the effective date
25 of this Act, the Texas A&M AgriLife Extension Service shall develop
26 the manual described by Section 251.007, Agriculture Code, as added
27 by this Act.

1 SECTION 8. Sections 251.002 and 251.005, Agriculture Code,
2 as amended by this Act, and Section 251.0055, Agriculture Code, as
3 added by this Act, apply to a governmental requirement adopted
4 before, on, or after the effective date of this Act.

5 SECTION 9. This Act takes effect September 1, 2023.

President of the Senate

Speaker of the House

I certify that H.B. No. 1750 was passed by the House on April 11, 2023, by the following vote: Yeas 143, Nays 3, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1750 was passed by the Senate on May 15, 2023, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

1 AN ACT

2 relating to nuisance actions and other actions against agricultural
3 operations.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 251.001, Agriculture Code, is amended to
6 read as follows:

7 Sec. 251.001. POLICY. Food security being essential, it
8 ~~[It]~~ is the policy of this state to conserve, protect, and encourage
9 the development and improvement of its agricultural land for the
10 production of food and other agricultural products. It is the
11 purpose of this chapter to reduce the loss to the state of its
12 agricultural resources by limiting the circumstances under which
13 agricultural operations may be legally threatened, subject to suit,
14 regulated, or otherwise declared ~~[considered]~~ to be a nuisance.

15 SECTION 2. Section 251.002(1), Agriculture Code, is amended
16 to read as follows:

17 (1) "Agricultural operation" includes the following
18 activities:

- 19 (A) cultivating the soil;
- 20 (B) producing crops or growing vegetation for
21 human food, animal feed, livestock forage, forage for wildlife
22 management, planting seed, or fiber;
- 23 (C) floriculture;
- 24 (D) viticulture;

- 1 (E) horticulture;
- 2 (F) silviculture;
- 3 (G) wildlife management;
- 4 (H) raising or keeping livestock or poultry,
5 including veterinary services; and
- 6 (I) planting cover crops or leaving land idle for
7 the purpose of participating in any governmental program or normal
8 crop or livestock rotation procedure.

9 SECTION 3. Sections 251.003, 251.004, and 251.006,
10 Agriculture Code, are amended to read as follows:

11 Sec. 251.003. ESTABLISHED DATE OF OPERATION. For purposes
12 of this chapter, the established date of operation is the date on
13 which an agricultural operation commenced agricultural operations
14 ~~[operation. If the physical facilities of the agricultural~~
15 ~~operation are subsequently expanded, the established date of~~
16 ~~operation for each expansion is a separate and independent~~
17 ~~established date of operation established as of the date of~~
18 ~~commencement of the expanded operation, and the commencement of~~
19 ~~expanded operation does not divest the agricultural operation of a~~
20 ~~previously established date of operation]~~.

21 Sec. 251.004. NUISANCE OR OTHER ACTIONS. (a) No nuisance
22 action or other action to restrain an agricultural operation may be
23 brought against an agricultural operation that has lawfully been in
24 operation and substantially unchanged for one year or more prior to
25 the date on which the action is brought. A person who brings a
26 nuisance action or other action to restrain an agricultural
27 operation that is not prohibited by this section must establish

1 each element of the action by clear and convincing evidence [~~, if~~
2 ~~the conditions or circumstances complained of as constituting the~~
3 ~~basis for the nuisance action have existed substantially unchanged~~
4 ~~since the established date of operation~~]. This subsection does not
5 restrict or impede the authority of this state or a political
6 subdivision to [~~protect the public health, safety, and welfare or~~
7 ~~the authority of a municipality to~~] enforce state law, including an
8 enforcement action by the Texas Commission on Environmental
9 Quality. For the purposes of this subsection, a substantial change
10 to an agricultural operation means a material alteration to the
11 operation of or type of production at an agricultural operation
12 that is substantially inconsistent with the operational practices
13 since the established date of operation.

14 (b) A person who brings a nuisance action or other action to
15 restrain an agricultural operation and seeks [~~for~~] damages or
16 injunctive relief against an agricultural operation that has
17 existed for one year or more prior to the date that the action is
18 instituted or who violates the provisions of Subsection (a) [~~of~~
19 ~~this section~~] is liable to the agricultural operator for:

20 (1) all costs and expenses incurred in defense of the
21 action, including [~~but not limited to~~] attorney's fees, court
22 costs, travel, and other related incidental expenses incurred in
23 the defense; and

24 (2) any other damages found by the trier of fact.

25 (c) This section does not affect or defeat the right of any
26 person to recover for injuries or damages sustained because of an
27 agricultural operation or portion of an agricultural operation that

1 is conducted in violation of a federal, state, or local statute or
2 governmental requirement that applies to the agricultural
3 operation or portion of an agricultural operation.

4 Sec. 251.006. AGRICULTURAL IMPROVEMENTS. (a) An owner,
5 lessee, or occupant of agricultural land is not liable to the state,
6 a governmental unit, or the owner, lessee, or occupant of other
7 agricultural land for the construction or maintenance on the land
8 of an agricultural improvement if the construction is not expressly
9 prohibited by statute or a governmental requirement adopted in
10 accordance with Section 251.005 in effect at the time the
11 improvement is constructed. Such an improvement does not
12 constitute a nuisance and is not otherwise subject to suit or
13 injunction.

14 (b) [~~This section does not apply to an improvement that~~
15 ~~obstructs the flow of water, light, or air to other land.~~] This
16 section does not prevent the enforcement of a state or federal
17 statute [~~or governmental requirement to protect public health or~~
18 ~~safety~~].

19 (c) In this section:

20 (1) "Agricultural land" includes:

21 (A) any land the use of which qualifies the land
22 for appraisal based on agricultural use as defined under Subchapter
23 D, Chapter 23, Tax Code; and

24 (B) any other land on which agricultural
25 operations exist or may take place.

26 (2) "Agricultural improvement" includes pens, barns,
27 fences, arenas, and other improvements designed for:

1 (A) the sheltering, restriction, or feeding of
2 animal or aquatic life;

3 (B) [~~for~~] storage of produce or feed; [~~or~~] or

4 (C) [~~for~~] storage or maintenance of:

5 (i) implements used for management
6 functions; or

7 (ii) equipment necessary to carry out
8 agricultural operations.

9 SECTION 4. Chapter 251, Agriculture Code, is amended by
10 adding Section 251.008 to read as follows:

11 Sec. 251.008. CONFLICT WITH OTHER LAW. If there is a
12 conflict between this chapter and other law, this chapter prevails.

13 SECTION 5. The changes in law made by this Act apply only to
14 a cause of action that accrues on or after the effective date of
15 this Act. A cause of action that accrued before the effective date
16 of this Act is governed by the law applicable to the cause of action
17 immediately before the effective date of this Act, and that law is
18 continued in effect for that purpose.

19 SECTION 6. This Act takes effect September 1, 2023.

President of the Senate

Speaker of the House

I certify that H.B. No. 2308 was passed by the House on April 11, 2023, by the following vote: Yeas 142, Nays 1, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2308 on May 8, 2023, by the following vote: Yeas 139, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2308 was passed by the Senate, with amendments, on May 4, 2023, by the following vote: Yeas 30, Nays 1.

Secretary of the Senate

APPROVED: _____

Date

Governor

AN ACT

relating to the notice and compensation a municipality must provide before revoking the right to use property for a use that was allowed before the adoption of or change to a zoning regulation or boundary.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 211.006, Local Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) In addition to any notice required by this section or Section 211.007, the governing body of a municipality or a zoning commission, as applicable, shall provide written notice of each public hearing regarding any proposed adoption of or change to a zoning regulation or boundary under which a current conforming use of a property is a nonconforming use if the regulation or boundary is adopted or changed. The notice must:

(1) be mailed by United States mail to each owner of real or business personal property where the proposed nonconforming use is located as indicated by the most recently approved municipal tax roll and each occupant of the property not later than the 10th day before the hearing date;

(2) contain the time and place of the hearing; and

(3) include the following text in bold 14-point type or larger:

"THE [MUNICIPALITY NAME] IS HOLDING A HEARING THAT WILL DETERMINE WHETHER YOU MAY LOSE THE RIGHT TO

1 CONTINUE USING YOUR PROPERTY FOR ITS CURRENT USE.

2 PLEASE READ THIS NOTICE CAREFULLY."

3 SECTION 2. Subchapter A, Chapter 211, Local Government
4 Code, is amended by adding Section 211.019 to read as follows:

5 Sec. 211.019. NONCONFORMING LAND USE. (a) In this section,
6 "market value" means the price the sale of the property would bring
7 in an arms-length transaction when offered for sale by one who
8 wishes, but is not obliged, to sell and when bought by one who is
9 under no necessity of buying it.

10 (b) A person using a property in a manner considered to be a
11 nonconforming use as a result of the adoption of or change to a
12 zoning regulation or boundary may continue to use the property in
13 the same manner unless required by a municipality to stop the
14 nonconforming use of the property.

15 (c) A requirement imposed by a municipality to stop a
16 nonconforming use of a property under this section includes:

17 (1) an official action by the governing body of the
18 municipality or a board, commission, department, or official of
19 the municipality; or

20 (2) a determination by the municipality that a
21 nonconforming use has an adverse effect or other necessary
22 determination that a municipality must make before imposing a
23 requirement to stop a nonconforming use under applicable law.

24 (d) If a municipality requires a property owner or lessee to
25 stop the nonconforming use of a property as described by Subsection
26 (b), the owner or lessee of the property is entitled to:

27 (1) payment from the municipality in an amount equal

1 to the sum of:

2 (A) the costs incurred by the owner or lessee of
3 the property that are directly attributable to ceasing the
4 nonconforming use of the property, including expenses related to
5 demolition, relocation, termination of a lease, or discharge of a
6 mortgage; and

7 (B) an amount equal to the greater of, as
8 determined by the municipality, the diminution in the market value
9 of the property, computed by subtracting the current market value
10 of the property after the imposition of a requirement to stop the
11 nonconforming use of the property from:

12 (i) the market value of the property on the
13 day before the date the notice was given under Section
14 211.006(a-1); or

15 (ii) the market value of the property on the
16 day before a person submits an application or request to the
17 municipality to require or the municipality otherwise requires a
18 person to stop using the property in a manner that is a
19 nonconforming use as described by Subsection (b); or

20 (2) continued nonconforming use of the property until
21 the owner or lessee recovers the amount determined under
22 Subdivision (1) through the owner or lessee's continued business
23 activities according to generally accepted accounting principles.

24 (e) Not later than the 10th day after the date a
25 municipality imposes a requirement to stop a nonconforming use of a
26 property under this section, the municipality shall give written
27 notice to each owner or lessee of the property, as indicated by the

1 most recently approved municipal tax roll, who is required to stop a
2 nonconforming use of the property of the requirement and of the
3 remedies which an owner or lessee of the property is entitled to
4 under Subsection (d).

5 (f) The owner or lessee of a property that is subject to a
6 requirement to stop a nonconforming use of the property under this
7 section shall not later than the 30th day after the date the
8 municipality gives the notice required by Subsection (e) respond in
9 writing to the municipality indicating the remedy under Subsection
10 (d) chosen by the owner or lessee. In the event of a conflict in the
11 choice of remedy by the owner and a lessee of the property, the
12 owner's choice of remedy shall control. In the event of a conflict
13 in the choice of remedy by the owners of a property that has more
14 than one owner, the choice of remedy made by an owner or owners
15 holding the greater ownership interest in the property shall
16 control. If the municipality does not receive timely notice from an
17 owner or lessee, the municipality may choose the remedy provided
18 under this section.

19 (g) A person receiving a payment under Subsection (d)(1)
20 must stop the nonconforming use not later than the 10th day after
21 the date of the payment.

22 (h) A person who continues the nonconforming use under
23 Subsection (d)(2) must stop the nonconforming use immediately on
24 the recovery of the amount determined under Subsection (d)(1).

25 (i) If more than one person seeks a payment from the
26 municipality under Subsection (d)(1), the municipality shall
27 apportion the payment between each person based on the market value

1 of the person's interest in the property. A person may appeal the
2 apportionment in the manner provided by this section.

3 (j) A person entitled to a remedy under this section may
4 appeal a determination under Subsection (d)(1) or (2) to the board
5 of adjustment of the municipality not later than the 20th day after
6 the date the determination is made. At the hearing before the board
7 of adjustment, the municipality has the burden of proof to
8 establish the correctness of its determination.

9 (k) A municipality or a person aggrieved by the final
10 decision of the board of adjustment under Subsection (j) may seek
11 judicial review of the decision by filing suit as provided by
12 Section 211.011 not later than the 20th day after the date the final
13 decision is made. The court shall review the decision in the manner
14 provided by Section 211.011 except that:

15 (1) the municipality has the burden of proving by clear
16 and convincing evidence that its determination was correct; and

17 (2) the court:

18 (A) in reviewing the municipality's decision may
19 not use a deferential standard in the municipality's favor; and

20 (B) is not limited to determining whether a
21 decision of the board meets the requirements of this chapter or
22 other applicable law.

23 (l) A person seeking to continue a nonconforming use under
24 Subsection (d)(2) who appeals the decision of the municipality or
25 board of adjustment may continue to use the property in the same
26 manner pending the appeal unless an official of the body that made
27 the decision shows cause to stay the nonconforming use by

1 certifying in writing to the board of adjustment or court with
2 jurisdiction over the appeal facts supporting the official's
3 opinion that continued nonconforming use of the property would
4 cause imminent peril to life or property. On a showing of cause the
5 board of adjustment or court with jurisdiction over the appeal may,
6 after notice to the official, grant a restraining order to stay
7 continued nonconforming use of the property.

8 (m) If the board of adjustment or court with jurisdiction
9 over an appeal determines that an owner or lessee is entitled to:

10 (1) a payment under this section in an amount
11 different than the amount determined by the municipality under
12 Subsection (d)(1), the board of adjustment or court shall order, as
13 applicable:

14 (A) additional payment to the owner or lessee; or
15 (B) the owner or lessee to reimburse the
16 municipality; or

17 (2) an amount of time to operate the nonconforming use
18 that is different than the amount of time initially received under
19 Subsection (d)(2), the board of adjustment or court shall order the
20 municipality to allow an owner or lessee to continue the
21 nonconforming use for additional or less time.

22 (n) An owner or lessee may waive the rights and remedies
23 provided by this section by providing to the municipality a written
24 waiver.

25 (o) This section does not apply to a nonconforming use that
26 has been intentionally abandoned for at least six months.

27 (p) A municipality's immunity from suit and governmental

1 immunity from liability are waived for purposes of an action
2 brought by a property owner or lessee to enforce the rights and
3 remedies under this section.

4 SECTION 3. (a) Section 211.006, Local Government Code, as
5 amended by this Act, and Section 211.019, Local Government Code, as
6 added by this Act, apply to a property for which:

7 (1) on or after June 1, 2023, the governing body or
8 zoning commission of a municipality considers a proposed adoption
9 of or change to a zoning regulation or boundary under which a
10 current conforming use of the property is a nonconforming use; or

11 (2) on or after February 1, 2023, the governing body or
12 a board, commission, department, or official of a municipality
13 requires, by ordinance or otherwise, or receives an application or
14 request to require a person to stop nonconforming use of the
15 property due to its nonconformity with the property's current
16 zoning.

17 (b) Subsection (a)(2) of this section applies to a property
18 regardless of whether the governing body or a board, commission,
19 department, or official of the municipality is required by
20 applicable law to make a determination that the nonconforming use
21 has an adverse effect or other determination before the
22 nonconforming use is required to stop.

23 SECTION 4. This Act takes effect immediately if it receives
24 a vote of two-thirds of all the members elected to each house, as
25 provided by Section 39, Article III, Texas Constitution. If this
26 Act does not receive the vote necessary for immediate effect, this
27 Act takes effect September 1, 2023.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 929 passed the Senate on April 20, 2023, by the following vote: Yeas 30, Nays 1.

Secretary of the Senate

I hereby certify that S.B. No. 929 passed the House on May 4, 2023, by the following vote: Yeas 136, Nays 8, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor

[<<Prev Rule](#)[Next Rule>>](#)

Texas Administrative Code

TITLE 19	EDUCATION
PART 2	TEXAS EDUCATION AGENCY
CHAPTER 61	SCHOOL DISTRICTS
SUBCHAPTER CC	COMMISSIONER'S RULES CONCERNING SCHOOL FACILITIES
RULE §61.1031	School Safety Requirements

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings.

(1) Actively monitored--supervised by an adult who can visibly review visitors prior to entrance, who can take immediate action to close and/or lock the door, and whose duties allow for sufficient attention to monitoring.

(2) Exterior secured area--an area fully enclosed by a fence and/or wall that:

(A) if enclosed by a fence or wall, utilizes a fence or wall at least 6 feet high with design features that prevent it from being easily scalable, such as stone, wrought iron, chain link with slats or wind screen, or chain link topped with an anti-scaling device, or utilizes a fence or wall at least 8 feet high;

(B) is well maintained; and

(C) if gated, features locked gates with emergency egress hardware and has features to prevent opening from the exterior without a key or combination mechanism.

(3) Instructional facility--this term has the meaning assigned in Texas Education Code (TEC), §46.001, and includes any real property, an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching curriculum under TEC, §28.002. For purposes of this section, an instructional facility does not include real property, improvements to real property, or necessary fixtures of an improvement to real property that are part of a federal, state, or private correctional facility or facility of an institution of higher education, medical provider, or other provider of professional or social services over which a school system has no control.

(4) Modular, portable building--

(A) an industrialized building as defined by Texas Occupations Code (TOC), §1202.002 and §1202.003;

(B) any relocatable educational facility as defined by TOC, §1202.004, regardless of the location of construction of the facility; or

(C) any other manufactured or site-built building that is capable of being relocated and is used as a school facility.

(5) Primary entrance--

(A) the main entrance to an instructional facility that is closest to or directly connected to the reception area; or

(B) any exterior door the school system intends to allow visitors to use to enter the facility during school hours either through policy or practice.

(6) School system--a public independent school district or public open-enrollment charter school.

(7) Secure vestibule--a secured space with two or more sets of doors and an office sign-in area where all but the exterior doors shall:

- (A) remain closed, latched, and locked;
- (B) comply with subsection (c)(3)(B) of this section; and
- (C) only open once the visitor has been visually verified.

(b) The provisions of this section apply to all school instructional facilities owned, operated, or leased by a school system, regardless of the date of construction or date of lease. The provisions of this section ensure that all school system instructional facilities have access points that are:

- (1) secured by design;
- (2) maintained to operate as intended; and
- (3) appropriately monitored.

(c) A school system shall implement the following safety and security standards compliance requirements to all school instructional facilities owned, operated, or leased by the school system.

(1) All instructional facilities campus-wide, including modular, portable buildings, must include the addition of graphically represented alpha-numerical characters on both the interior and exterior of each exterior door location. The characters may be installed on the door, or on at least one door at locations where more than one door leads from the exterior to the same room inside the facility, or on the wall immediately adjacent to or above the door location. Characters shall comply with the International Fire Code, §505. The primary entrance of an instructional facility shall always be the first in the entire sequence and is the only door location that does not require numbering. The numbering sequence shall be clockwise and may be sequenced for the entire campus or for each facility individually. The door-numbering process must comply with any and all accessibility requirements related to signage.

(2) Unless a secure vestibule is present, a primary entrance shall:

- (A) meet all standards for exterior doors;
- (B) include a means to allow an individual located within the building to visually identify an individual seeking to enter the primary entrance when the entrance is closed and locked, including, but not limited to, windows, camera systems, and/or intercoms;
- (C) feature a physical barrier that prevents unassisted access to the facility by a visitor; and
- (D) feature a location for a visitor check-in and check-out process.

(3) All exterior doors shall:

- (A) be, by default, set to a closed, latched, and locked status, except that:
 - (i) a door may be unlocked if it is actively monitored or within an exterior secured area; and
 - (ii) for the purposes of ventilation, a school system may designate in writing as part of its multi-hazard emergency operations plan under TEC, §37.108, specific exterior doors that are allowed to remain open for specified periods of time if explicitly authorized by the school safety and security committee established by TEC, §37.109, when a quorum of members are present, and only if it is actively monitored or within an exterior secured area;

(B) be constructed, both for the door and door frame and their components, of materials and in a manner that make them resistant to entry by intruders. Unless inside an exterior secured area, doors constructed of glass or containing glass shall be constructed or modified such that the glass cannot be easily broken and allow an intruder to open or otherwise enter through the door (for example, using forced entry-resistant film);

(C) include:

(i) a mechanism that fully closes and engages locking hardware automatically after entry or egress without manual intervention, regardless of air pressure within or outside of the facility; and

(ii) a mechanism that allows the door to be opened from the inside when locked to allow for emergency egress while remaining locked; and

(D) if keyed for re-entry, be capable of being unlocked with a single (or a small set of) master key(s), whether physical key, punch code, or key-fob or similar electronic device.

(4) Except when inside an exterior secured area, classrooms with exterior entry doors shall include a means to allow an individual located in the classroom to visually identify an individual seeking to enter the classroom when the door is closed and locked, including, but not limited to, windows, camera systems, and/or intercoms.

(5) Except when inside an exterior secured area, all windows that are adjacent to an exterior door and that are of a size and position that, if broken, would easily permit an individual to reach in and open the door from the inside shall be constructed or modified such that the glass cannot be easily broken.

(6) Except when inside an exterior secured area, all ground-level windows near exterior doors that are of a size and position that permits entry from the exterior if broken shall be constructed or modified such that the glass cannot be easily broken and allow an intruder to enter through the window frame (for example, using forced entry-resistant film).

(7) If designed to be opened, all ground-level windows shall have functional locking mechanisms that allow for the windows to be locked from the inside and, if large enough for an individual to enter when opened or if adjacent to a door, be closed and locked when staff are not present.

(8) Roof access doors should default to a locked, latched, and closed position when not actively in use and be lockable from the interior.

(9) All facilities must:

(A) include one or more distinctive, exterior secure master key box(es) designed to permit emergency access to both law enforcement agencies and emergency responder agencies from the exterior (for example, a Knox box) at a location designated by the local authorities with applicable jurisdiction; or

(B) provide all local law enforcement electronic or physical master key access to the building(s).

(10) A communications infrastructure shall be implemented that must:

(A) ensure equipment is in place such that law enforcement and emergency responder two-way radios can function within most portions of the building(s); and

(B) include a panic alert button, duress, or equivalent alarm system, via standalone hardware, software, or integrated into other telecommunications devices or online applications, that includes the following functionality.

(i) An alert must be capable of being triggered by campus staff, including temporary or substitute staff, from an integrated or enabled device.

(ii) An alert must be triggered automatically in the event a district employee makes a 9-1-1 call using the hardware or integrated telecommunications devices described in this subparagraph from any location within the school system.

(iii) With any alert generated, the location of where the alert originated shall be included.

(iv) The alert must notify a set of designated school administrators as needed to provide confirmation of response, and, if confirmed, notice must be issued to the 9-1-1 center of an emergency situation requiring a law enforcement and/or emergency response and must include the location of where the alert originated. A notice can simultaneously be issued to all school staff of the need to follow appropriate emergency procedures.

(v) For any exterior doors that feature electronic locking mechanisms that allow for remote locking, the alert system will trigger those doors to automatically lock.

(11) In implementing the requirements of this section, school systems shall comply with state and federal Kari's Laws and federal RAY BAUM's Act and corresponding rules and regulations pertaining to 9-1-1 service for school telephone systems, including a multi-line telephone system.

(d) Certain operating requirements. A school system shall implement the following.

(1) Access control. The board of trustees or the governing board shall adopt a policy requiring the following continued auditing of building access:

(A) conduct at least weekly inspections during school hours of all exterior doors of all instructional facilities to certify that all doors are, by default, set to a closed, latched, and locked status and cannot be opened from the outside without a key as required in subsection (c)(3)(A) of this section;

(B) report the findings of weekly inspections required by subparagraph (A) of this paragraph to the school system's safety and security committee as required by TEC, §37.109, and ensure the results are kept for review as part of the safety and security audit as required by TEC, §37.108;

(C) report the findings of weekly inspections required by subparagraph (A) of this paragraph to the principal or leader of the instructional facility to ensure awareness of any deficiencies identified and who must take action to reduce the likelihood of similar deficiencies in the future; and

(D) include a provision in the school system's applicable policy stating that nothing in a school system's access control procedures will be interpreted as discouraging parents, once properly verified as authorized campus visitors, from visiting campuses they are authorized to visit.

(2) Exterior and interior door numbering site plan.

(A) A school system must develop and maintain an accurate site layout and exterior and interior door designation document for each instructional facility school system-wide that identifies all exterior and interior doors in the instructional facility and depicts all exterior doors on a floor plan with an alpha-numeric designation, in accordance with the door numbering specifications established in subsection (c)(1) of this section.

(B) Copies of exterior and interior door numbering site plans shall be readily available in each campus main office.

(C) Electronic copies of exterior and interior door numbering site plans shall be supplied to the local 9-1-1 administrative entity so that the site plans can be made available to emergency responders by 9-1-1 dispatchers.

(D) The site layout and exterior and interior door designation document should be oriented in a manner that depicts true north.

(3) Maintenance.

(A) A school system shall perform at least twice-yearly maintenance checks to ensure the facility components required in subsection (c) of this section function as required. At a minimum, maintenance checks shall ensure the following:

(i) instructional facility exterior doors function properly, including meeting the requirements in subsection (c)(3)(A) and (C) of this section;

(ii) the locking mechanism for any ground-level windows that can be opened function properly;

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1 AN ACT

2 relating to certain regulations adopted by governmental entities
3 for the building products, materials, or methods used in the
4 construction or renovation of residential or commercial buildings.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Title 10, Government Code, is amended by adding
7 Subtitle Z to read as follows:

8 SUBTITLE Z. MISCELLANEOUS PROVISIONS PROHIBITING CERTAIN

9 GOVERNMENTAL ACTIONS

10 CHAPTER 3000. GOVERNMENTAL ACTION AFFECTING RESIDENTIAL AND

11 COMMERCIAL CONSTRUCTION

12 Sec. 3000.001. DEFINITIONS. In this chapter:

13 (1) "National model code" has the meaning assigned by
14 Section 214.217, Local Government Code.

15 (2) "Governmental entity" has the meaning assigned by
16 Section 2007.002.

17 Sec. 3000.002. CERTAIN REGULATIONS REGARDING BUILDING
18 PRODUCTS, MATERIALS, OR METHODS PROHIBITED. (a) Notwithstanding
19 any other law and except as provided by Subsection (d), a
20 governmental entity may not adopt or enforce a rule, charter
21 provision, ordinance, order, building code, or other regulation
22 that:

23 (1) prohibits or limits, directly or indirectly, the
24 use or installation of a building product or material in the

1 construction, renovation, maintenance, or other alteration of a
2 residential or commercial building if the building product or
3 material is approved for use by a national model code published
4 within the last three code cycles that applies to the construction,
5 renovation, maintenance, or other alteration of the building; or

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

14 (b) A governmental entity that adopts a building code
15 governing the construction, renovation, maintenance, or other
16 alteration of a residential or commercial building may amend a
17 provision of the building code to conform to local concerns if the
18 amendment does not conflict with Subsection (a).

19 (c) This section does not apply to:

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

24 (2) a requirement for a building necessary to consider
25 the building eligible for windstorm and hail insurance coverage
26 under Chapter 2210, Insurance Code;

27 (3) an ordinance or other regulation that regulates

1 outdoor lighting that is adopted for the purpose of reducing light
2 pollution and that:

3 (A) is adopted by a governmental entity that is
4 certified as a Dark Sky Community by the International Dark-Sky
5 Association as part of the International Dark Sky Places Program;
6 or

7 (B) applies to outdoor lighting within five miles
8 of the boundary of a military base in which an active training
9 program is conducted;

10 (4) an ordinance or order that:

11 (A) regulates outdoor lighting; and

12 (B) is adopted under Subchapter B, Chapter 229,
13 Local Government Code, or Subchapter B, Chapter 240, Local
14 Government Code;

15 (5) a building located in a place or area designated
16 for its historical, cultural, or architectural importance and
17 significance that a municipality may regulate under Section
18 211.003(b), Local Government Code, if the municipality:

19 (A) is a certified local government under the
20 National Historic Preservation Act (54 U.S.C. Section 300101 et
21 seq.); or

22 (B) has an applicable landmark ordinance that
23 meets the requirements under the certified local government program
24 as determined by the Texas Historical Commission;

25 (6) a building located in a place or area designated
26 for its historical, cultural, or architectural importance and
27 significance by a governmental entity, if designated before April

1 1, 2019;

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

4 (8) a building designated as a Recorded Texas Historic
5 Landmark;

6 (9) a building designated as a State Archeological
7 Landmark or State Antiquities Landmark;

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

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

13 (12) a building located in an area designated for
14 development, restoration, or preservation in a main street city
15 under the main street program established under Section [442.014](#).

16 (d) A municipality that is not a municipality described by
17 Subsection (c)(5)(A) or (B) may adopt or enforce a regulation
18 described by Subsection (a) that applies to a building located in a
19 place or area designated on or after April 1, 2019, by the
20 municipality for its historical, cultural, or architectural
21 importance and significance, if the municipality has the voluntary
22 consent from the building owner.

23 (e) A rule, charter provision, ordinance, order, building
24 code, or other regulation adopted by a governmental entity that
25 conflicts with this section is void.

26 Sec. 3000.003. INJUNCTION. (a) The attorney general or an
27 aggrieved party may file an action in district court to enjoin a

1 violation or threatened violation of Section 3000.002.

2 (b) The court may grant appropriate relief.

3 (c) The attorney general may recover reasonable attorney's
4 fees and costs incurred in bringing an action under this section.

5 (d) Sovereign and governmental immunity to suit is waived
6 and abolished only to the extent necessary to enforce this chapter.

7 Sec. 3000.004. OTHER PROVISIONS NOT AFFECTED. This chapter
8 does not affect provisions regarding the installation of a fire
9 sprinkler protection system under Section 1301.551(i), Occupations
10 Code, or Section 775.045(a)(1), Health and Safety Code.

11 Sec. 3000.005. SEVERABILITY. If any provision of a rule,
12 charter provision, ordinance, order, building code, or other
13 regulation described by Section 3000.002(a) is held invalid under
14 this chapter, the invalidity does not affect other provisions or
15 applications of the rule, charter provision, ordinance, order,
16 building code, or other regulation that can be given effect without
17 the invalid provision or application, and to this end the
18 provisions of the rule, charter provision, ordinance, order,
19 building code, or other regulation are severable.

20 SECTION 2. This Act takes effect September 1, 2019.

President of the Senate

Speaker of the House

I certify that H.B. No. 2439 was passed by the House on April 30, 2019, by the following vote: Yeas 124, Nays 21, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2439 on May 23, 2019, by the following vote: Yeas 133, Nays 9, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2439 was passed by the Senate, with amendments, on May 19, 2019, by the following vote: Yeas 26, Nays 5.

Secretary of the Senate

APPROVED: _____

Date

Governor