

Zoning Case 2023-019

An Ordinance of the City of Plano, Texas, amending Article 3 (Site Plan Review), Article 5 (Variances and Appeals of Administrative Decisions), Article 7 (Nonconformities), Article 9 (Residential Districts), Article 10 (Nonresidential Districts), Article 14 (Allowed Uses and Use Classifications), Article 15 (Use-specific Regulations), and Article 20 (Screening, Fence and Wall Regulations) of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2015-5-2, as heretofore amended, pertaining to recent state legislative actions to ensure compliance with state law, including amendments related to Senate Bill 929; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, a publication clause, and an effective date.

WHEREAS, the City Secretary of Plano, Texas, directed that notices of a hearing be issued, as required by the Zoning Ordinance of the City of Plano and laws of the State of Texas, at a meeting of the City Council, to be held on the 26th day of February 2024, for the purpose of considering a change in the Zoning Ordinance; and

WHEREAS, the City Secretary of said City accordingly caused to be issued and published the notices required by its Zoning Ordinance and laws of the State of Texas applicable thereto, the same having been published in a paper of general circulation in the City of Plano, Texas, at least fifteen (15) days prior to the time set for such hearing; and

WHEREAS, the City Council of said City, pursuant to such notice, held its public hearing and heard all persons wishing to be heard both for and against the aforesaid change in the Zoning Ordinance, on the 26th day of February 2024; and

WHEREAS, the City Council is of the opinion and finds that such change should be adopted, would not be detrimental to the public health, safety, or general welfare, and will promote the best and most orderly development of the properties affected thereby, and to be affected thereby, in the City of Plano, and as well, the owners and occupants thereof, and the City generally.

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

Section I. Part B of Subsection 3.100.5 (Submission of Applications) of Section 3.100 (General) of Article 3 (Site Plan Review) of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2015-5-2, as the same has been heretofore amended, is hereby further amended, 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.

Section II. Subsection 5.200.3 (Amortization) of Section 5.200 (Jurisdiction) of Article 5 (Variances and Appeals of Administrative Decisions) of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2015-5-2, as the same has been heretofore amended, is hereby further amended, such subsection to read in its entirety as follows:

.3 Payment for Termination of Nonconforming Use or Amortization

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.

Section III. Article 7 (Nonconformities) of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2015-5-2, as the same has been heretofore amended, is hereby further amended, 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

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.

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.
- .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.

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 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.

Section IV. Subsection 9.1200.4 (Special District Requirements) of Section 9.1200 (GR, General Residential District) of Article 9 (Residential Districts) of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2015-5-2, as the same has been heretofore amended, is hereby further amended, 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 to perpetuate the long-term character and viability of the community. The following provisions are required for that purpose:

...

Section V. Subsection 10.800.3 (Area, Yard, and Bulk Requirements) of Section 10.800 (BG, Downtown Business/Government District) of Article 10 (Nonresidential Districts) of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2015-5-2, as the same has been heretofore amended, is hereby further amended, such portion of the subsection to read as follows:

Description	Commercial and Multifamily Requirement	Single-Family Attached Requirement
...		
Maximum Height	<p>4 story (except as noted in Other Height/Setback Requirements below).</p> <p>Four stories of multifamily are permitted on a horizontal structural 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.</p>	3 story, 50 feet

Description	Commercial and Multifamily Requirement	Single-Family Attached Requirement
	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.	
...		

Section VI. Part B of Subsection 10.1100.6 (Special District Requirements) of Section 10.1100 (RC, Regional Commercial District) of Article 10 (Nonresidential Districts) of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2015-5-2, as the same has been heretofore amended, is hereby further amended to repeal the part that required certain building materials in its entirety and reserve it for future use:

B. [Reserved]

Section VII. 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) of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2015-5-2, as the same has been heretofore amended, is hereby further amended to repeal the subpart that required certain building materials in its entirety and reserve it for future use:

ii. [Reserved]

Section IX. Section 14.200 (Nonresidential Districts Use Table) of Article 14 (Allowed Uses and Use Classifications) of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2015-5-2, as the same has been heretofore amended, is hereby further amended to add the following to the Nonresidential Districts Use Table:

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	P 56	P 56	P 56	P 56	P 56	56	56	P 56	P 56	P 56	P 56	P 56	P 56	P 56	P 56
Kennel (Indoor Pens)/ Commercial Pet Sitting	Service	S 22	S 22	P 22	P 22	P 22	22	P 22	P 22	22	P 22	P 22	22	P 22	P 22	P 22
Kennel (Outdoor Pens)	Service	22	22	22	22	22	22	22	22	22	22	22	22	P 22	P 22	22
Veterinary Clinic	Service	S 22	S 22	P 22	P 22	P 22	22	P 22	P 22	22	P 22	P 22	22	P 22	P 22	P 22

Section X. Section 14.300 (Use Table Notes) of Article 14 (Allowed Uses and Use Classifications) of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2015-5-2, as the same has been heretofore amended, is hereby further amended, to add a note to read as follows:

Number	End Note
56	See Sec. 14.700.

Section XI. Article 14 (Allowed Uses and Use Classifications) of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2015-5-2, as the same has been heretofore amended, is hereby further amended, 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.

Section XII. Subsection 15.1400.2 of Section 15.1400 (Superstores) of Article 15 (Use-specific Regulations) of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2015-5-2, as the same has been heretofore amended, is hereby further amended, 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, or material textures that visually breakup the horizontal and vertical expanse of the facade.

Section XIII. Section 15.1600 (Veterinary Clinics and Kennels (Indoor Pens)/Commercial Pet Sitting) of Article 15 (Use-specific Regulations) of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2015-5-2, as the same has been heretofore amended, is hereby further amended, such section to read in its entirety as follows:

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

- .1 In the O-1 and O-2 districts, veterinary clinics and kennel (indoor pens)/commercial pet sitting may be permitted by a specific use permit only. In these districts, veterinary clinics and kennels (indoor pens)/commercial pet sitting shall meet the following conditions and requirements:
 - A. Separate customer and service entrances must be provided from exterior building doorways.
 - B. Clinics may only be allowed in freestanding, single-occupant buildings or the ground floor of a multi-occupant building.
 - C. 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.

Section XIV. Part A of Subsection 20.200.1 of Section 20.200 (General Fence and Wall Regulations) of Article 20 (Screening, Fence and Wall Regulations) of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2015-5-2, as the same has been heretofore amended, is hereby further amended, 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 8 feet above grade, provided that the fence material is wrought iron or chain link.

Section XV. All provisions of the ordinances of the City of Plano in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Ordinances of the City of Plano, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

Section XVI. The repeal of any ordinance or part of ordinances effectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinance at the time of passage of this Ordinance.

Section XVII. Any violation of the provisions or terms of this ordinance by any person, firm or corporation shall be a misdemeanor offense and shall be subject to a fine in accordance with Section 1-4(a) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

Section XVIII. It is the intention of the City Council that this Ordinance, and every provision hereof, shall be considered severable and the invalidity or partial invalidity of any section, clause or provision of this Ordinance shall not affect the validity of any other portion of this Ordinance.

Section XIX. This Ordinance shall become effective immediately upon its passage and publication as required by law.

PASSED AND APPROVED on the 26th day of February, 2024.

John B. Muns, MAYOR

ATTEST:

Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY