

City of West University Place
Harris County, Texas

Ordinance No. 1939

AN ORDINANCE AMENDING THE ZONING ORDINANCE AND CODE OF ORDINANCES OF THE CITY OF WEST UNIVERSITY PLACE, TEXAS REGARDING LOSS OF PRIOR NONCONFORMING STATUS FOR CHANGE IN USE; PARKING REGULATIONS FOR FOOD SERVICE ESTABLISHMENTS; AND CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE SUBJECTS.

WHEREAS, the City Council and the Zoning and Planning Commission ("Z&PC") of the City of West University Place, Texas ("City") have held a joint public hearing on a proposal to amend the Zoning Ordinance of the City, as last re-formatted and re-adopted by Ordinance No. 1672, adopted March 12, 2001, and as subsequently amended ("Zoning Ordinance");

WHEREAS, the Z&PC has made a final report to the City Council with respect to such proposal, which report is attached as Exhibit A and made a part of this ordinance; and

WHEREAS, the City Council has considered the report of the Z&PC as well as the City's Comprehensive Plan, and City Council formally approves and adopts the report of the Z&PC; and

WHEREAS, all notices, hearings and procedures relating to amending the Zoning Ordinance, as may be required by law, the City Charter or the Zoning Ordinance, have been duly given, held and followed, and the City Council has jurisdiction to amend the Zoning Ordinance as provided herein;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST UNIVERSITY PLACE:

Section 1. The City Council officially finds, determines, declares and adopts all of the matters set out in the preamble of this ordinance, and the Zoning Ordinance is hereby amended as recommended by the Z&PC, according to the Z&PC's final report in Exhibit A, which is attached and made a part of this ordinance for all purposes.

Section 2. All ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict only.

Section 3. If any word, phrase, clause, sentence, paragraph, section or other part of this ordinance or the application thereof to any person or circumstance, shall ever be held to be invalid or unconstitutional by any court of competent jurisdiction, neither the remainder of this ordinance, nor the application of such word, phrase, clause, sentence, paragraph, section or other part of this ordinance to any other persons or circumstances, shall be affected thereby.

Section 4. The City Council officially finds, determines and declares that a sufficient written notice of the date, hour, place and subject of each meeting at which this ordinance was discussed, considered or acted upon was given in the manner required by the Texas Open Meetings Act, as amended, and that each such meeting has been open to the public as required by law at all times during such discussion, consideration and action. The City Council ratifies, approves and confirms such notices and the contents and posting thereof. The City Council officially finds, determines and declares that sufficient notices of the joint public hearing were given, and the City Council ratifies, approves and confirms such notices, including the contents and the method in which they were given.

Section 5. This ordinance shall become effective on the tenth day following its publication, as provided in the City Charter.

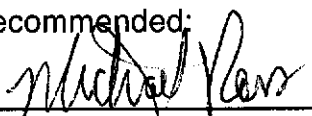
CONSIDERED, PASSED, AND APPROVED on first reading on February 14, 2011.

CONSIDERED, PASSED, AND APPROVED on second reading, **AND SIGNED**, on February 28, 2011.

(Seal)

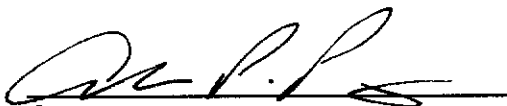
Attest: 
City Secretary

Signed: _____
Mayor Pro Tem

Recommended:


City Manager

Approved as to legal form:



City Attorney

Exhibit A

Zoning & Planning Commission
City of West University Place, Texas
3800 University Boulevard
West University Place, Texas 77005

January 13, 2011

Honorable Mayor &
Members of the City Council
City of West University Place
3808 University Boulevard
Houston, Texas 77005

Subject: Final report on a proposal to amend the Zoning Ordinance and Code of Ordinances of the City of West University Place, Texas ("City") relating to LOSS OF PRIOR NONCONFORMING (PNC) STATUS FOR A CHANGE IN USE; AND PARKING REGULATIONS FOR CERTAIN FOOD SERVICE ESTABLISHMENTS.

To the Honorable Mayor
& Members of City Council:

The Zoning & Planning Commission of the City submits this, its final report, on the subject proposal, for the assistance of the Council as well as other interested persons.

Scope of Proposal. The purpose of this proposal is 1) to improve the description of commercial districts by refining how the "uses" permitted within the zoning district are defined, 2) take steps to "sunset" Prior Nonconforming (PNC) status when there is a change in nonconforming commercial use, and 3) change the number of minimum required parking spaces for certain food service establishments.

- 1). This proposal amends Section 2 of the Zoning Ordinance to establish a new definition for "Commercial District" in order to help create a distinction between the "uses" contained within a zoning "district" and the "district" itself.
- 2). The main purpose of this proposal is to establish regulations by which a loss of PNC status occurs when there is a change in a nonconforming commercial use.
- 3). This proposal equalizes the existing requirement for additional parking spaces for food service establishments operating within a shopping center versus food service

establishments operating from a single business structure. A second part of the proposal classifies carryout food service use with retail use for the purpose of establishing minimum parking space requirements.

In response to City Council's request to study these issues, the Zoning and Planning Commission developed this proposal as a preliminary measure to enhance enforcement of the ordinance provisions. The Zoning and Planning Commission notes that these provisions will likely not resolve the issues facing the owners of properties with commercial uses in non-commercial zoning districts. The Zoning and Planning Commission urges City Council to provide for a comprehensive review of the commercial zoning provisions in the near future. Such a review should address the creation of improved commercial definitions in the Zoning Ordinance. The use of those new definitions should help establish or confirm appropriate zoning districts for commercial uses.

The public hearing held on January 10, 2011 at 6:30 p.m. in a joint session with City Council yielded very little comment from the public. The public hearing was recessed and continued to the regular session of the Zoning and Planning Commission held on January 13, 2011 at 6:15 p.m. There were no additional comments received and no changes to the proposal requested. The Zoning and Planning Commission closed its portion of the public hearing.

Recommendation. Based on the review given this proposal, the Commission: (i) finds that the proposal, if adopted, would be in the public interest and consistent with the Comprehensive Plan, (ii) finds that the proposal reasonably addresses circumstances which have arisen since the last comprehensive revision of the zoning ordinance, (iii) makes its final recommendation favorable to the proposal, and (iv) recommends that the City Council adopt the proposal.

The Vote. The vote on approval of this report was as follows: Steve Brown, De De DeStefano, Bruce Frankel, Lauren Griffith, Bob Higley and Sam Parikh voted "aye"; 0 "noes"; Dick Yehle absent.

Respectfully submitted:

ZONING AND PLANNING COMMISSION OF THE
CITY OF WEST UNIVERSITY PLACE, TEXAS

By: 
For the Commission

Exhibit A

9-9-10

Amend Section 2, Definitions, as follows:

Commercial (C) District. Includes all C and all portions of a Planned Development District (PDD) designated primarily for commercial uses.

Commercial Uses, light. Any Commercial District use ~~other than~~ **except** an auto-intensive use or one of the other medium commercial uses, ~~composed of one or more of the following uses~~ **Examples include but are not limited to:** offices for ordinary business or professional activities use, stores for the sale at retail of goods or services use, restaurant use, banks and savings and loan establishment **financial services use**.

Commercial Uses, medium. Any Commercial District use composed of one or more of the following **uses:** auto-intensive uses, night assembly uses, theaters use, bars use, clubs use, physical fitness facilities or health care facilities use. Any use which is partially a light commercial use and partially a medium commercial use shall be deemed to be a medium commercial use for all purposes.

Add new subsection (j) to Section 12-103 as follows:

Section 12-103. Losing PNC Status.

(a) *New principal building.* If, after the 1987 effective date, a new principal building is constructed on a building site, PNC status is lost for all PNC items relating to the building site. Exceptions: (i) this does not apply to those principal buildings treated the same as structures constructed prior to a given effective date (see above); (ii) PNC status with respect to a building site dimension is not lost.

(b) *Conformance is achieved; discontinuation.* If a PNC item is changed to conform to this ordinance for an indefinite period or for 180 days or more, PNC status is lost for that item. If a use of property is discontinued for 180 days or more (exclusive of time when actual construction work prevents the use), the use loses PNC status.

(c) *Loss to casualty, etc.* If 51% or more of the replacement cost of a structure is lost to casualty, eminent domain, involuntary demolition or other similar cause, the structure loses PNC status. Exception: This does not apply to a building used for SFR purposes, except as to non-compliance with framed area regulations (i.e., in case of such a 51% or greater loss, PNC status for non-compliance with framed area regulations is lost). For this purpose, "replacement cost" is determined by standard cost levels for similar structures as most recently published by the International Code Council or similar agency. See, e.g., the ICC internet publication of "Building Valuation Data," which provides average construction costs per square foot, by type of construction and occupancy group, with factors to modify those costs for the Houston area. The ZBA may issue a special exception to allow such a structure to be rebuilt and retain PNC status, if the ZBA finds: (i) rebuilding is necessary to avoid substantial economic waste and economic hardship, and (ii) there will be no substantial adverse effects of the rebuilt structure.

(d) *Violation of special conditions.* If a PNC item was specially authorized by a zoning ordinance of the City or by a special exception, variance, permit or other authorization, and if the terms or conditions of the authorization are violated, the item loses PNC status.

(e) *Degree of nonconformity increased.* A PNC item loses PNC status to the extent that the degree of nonconformity is increased (or to the extent that the non-conforming area is expanded).

(j) Change in Use. A nonconforming commercial use loses PNC status if changed to any other commercial use.

Amend Section 10-100 as follows:

Section 10-100. Off-Street Parking.

There must be off-street parking spaces for each occupied building space within the City, as set out below, and subject to the other provisions of this ordinance:

| <i>Use of type of space</i> | <i>Minimum number of parking spaces</i> |
|-----------------------------|---|
| SFD use. | The number of garage parking spaces required by Article 7 plus one additional space located between the required garage spaces(s) and the public roadway. The additional space may be on the building site or in the adjacent street area (or partly in each), but may not encroach upon any part of a public sidewalk (existing or proposed) or the roadway. |

| <i>Use of type of space</i> | <i>Minimum number of parking spaces</i> |
|--|--|
| Other residential space | 2.5 (3.0 in PDD-TH1, PDD-TH2 and PDD-TH5) per DU. See Note 1. |
| Community center, library, school, place of worship, museum or similar institution, which may include mixed uses and types of space served by common parking spaces (including auditoria and any high-density occupancy spaces that are part of the institution) | 10.0 plus 3.33 per 1,000 square feet of gross floor area in excess of 2,000 square feet. |
| Health care facility space (not including offices) | Greater of 1.5 per bed or 1.5 per employee on the maximum work shift. |
| Theater or auditorium space or space with any high-density occupancy (except as included in community center, library, school, place of worship, museum or similar institution) | Greater of: (i) 1.0 for each four seats; or (ii) 1.5 per 1,000 square feet of gross floor area, plus 1.0 for each employee on the maximum shift. |
| Office space used to provide medical services | 6.0 per 1,000 square feet of gross floor area. |

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| Other office space | 4.0 per 1,000 square feet of gross floor area. |
| Physical fitness facility space | 10.0 per 1,000 feet of gross floor area. |
| Studio and gallery space, bank and financial services space (except space used for auto-intensive uses) | Greater of: (i) 5.0 per 1,000 square feet of gross floor area; or (ii) 3.0 per commercial unit. |
| Space with auto-intensive uses | 10.0 per 1,000 square feet of gross floor area. |
| Retail space used for rental of personal property (except space used for auto-intensive uses) | 10.0 per 1,000 square feet of gross floor area. |
| <u>Food Service space with indoor or outdoor seating such as dine-in</u> restaurant space, club, cafe and similar recreation or amusement space (except space used for auto-intensive uses) | Greater of: (i) 1.0 for each three seats for the general public; or (ii) 10.0 per 1,000 square feet of gross floor area. |
| Grocery store space, including neighborhood convenience store space | 5.0 per 1,000 square feet of gross floor area. |
| Other retail and personal service space, <u>including carryout food service space with no indoor or outdoor seating.</u> | 5.0 per 1000 square feet of gross floor area. |
| Utility service space, research or testing laboratory space, laboratories, warehouses | 1.0 for each three employees on the maximum working shift, plus 1.0 space for each truck or vehicle used in connection therewith. |
| Shopping centers | 4.0 per 1,000 square feet of gross floor area, plus spaces required for office, theater, auditorium and food service space. <i>See Note 2.</i> |
| All other types of space and uses | 10.0 per 1,000 square feet of gross floor area used or occupied by people. |

Note 1. Guest spaces. There must be guest parking spaces marked and kept always available for common use, not reserved for specific persons or classes of persons. Minimum number of guest spaces: 0.5 per DU (1.0 per DU in PDD-TH1, PDD-TH2 and PDD-TH5), rounded up. See Table 7-1, Note 7 regarding parking for "garden style use" in PDD-TH4. See Articles 7 and 10 regarding grouping and other requirements.

Note 2. Additional spaces for shopping centers: (a) If office space exceeds 10% of the gross floor area of the center, add 3.0 spaces per 1,000 square feet of office space in excess of 10%. (b) If a theater or auditorium occupies 10% or less of the gross floor area of the center, add 3.0 spaces for each 100 seats in the theater or auditorium. (c) If a theater or auditorium occupies more than 10% of the center's gross floor area, the seats are apportioned on a square-foot basis, so that one

portion corresponds to 10% of the gross floor area and the other portion corresponds to space in excess of 10%; for the 10% portion, add 3.0 spaces for each 100 seats, and for the portion in excess of 10%, add 25.0 spaces for each 100 seats. (d) If there is any **dine-in** food service space **with indoor or outdoor seating**, add ~~10.0~~ **6.0** spaces per 1,000 square feet of gross floor area of food service.