

ORDINANCE NO. 2019-11-074

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING SECTIONS 70-58 (DUTY OF OWNER, OCCUPANT TO CUT AND REMOVE WEEDS, BRUSH, AND UNSIGHTLY MATTER), 142-5 (APPROVAL REQUIRED), 146-7 (ZONING DISTRICT MAP), 146-40 (NONCONFORMING USES AND NONCONFORMING STRUCTURES), 146-84 (NEIGHBORHOOD BUSINESS DISTRICT), 146-99 (REC REGIONAL EMPLOYMENT CENTER OVERLAY DISTRICT), 146-131 (OFF-STREET LOADING), 146-132 (FENCES, WALLS, AND SCREENING REQUIREMENTS), 146-139 (ARCHITECTURAL AND SITE STANDARDS), 146-162 (ADMINISTRATIVE OFFICIAL) 146-164 (CHANGES AND AMENDMENTS), 146-165 (BOARD OF ADJUSTMENT), OF THE CODE OF ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE HEREOF

WHEREAS, the City of McKinney adopted the Code of Ordinances for the protection of the public health and general welfare of the people of the City of McKinney; and

WHEREAS, the City Council and the Planning and Zoning Commission have recognized that certain provisions of the Code of Ordinances should be reviewed and updated; and

WHEREAS, amendments to these provisions have been proposed and the City Council and the Planning and Zoning Commission of the City of McKinney are of the opinion that these chapters should be amended.

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

- Section 1. That the Code of Ordinances, City of McKinney, Texas, Chapters 70, 142 and 146, are hereby amended and shall read as indicated in Exhibit "A", attached hereto.
- Section 2. If any section, subsection, paragraph, sentence, phrase or clause of this Ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this Ordinance, which shall remain in full force and effect, and to this end, the provisions of this Ordinance are declared to be severable.
- Section 3. That this Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of said ordinances except in those instances where provisions of those ordinances are in direct conflict with the provisions of this Ordinance and such ordinances shall remain intact and are hereby ratified, verified and affirmed.
- Section 4. This Ordinance shall become effective from and after the date of its final passage and publication as provided by law, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THE 5th DAY OF NOVEMBER, 2019.

CITY OF MCKINNEY, TEXAS

GEORGE C. FULLER
Mayor

CORRECTLY ENROLLED:

EMPRESS DRANE
City Secretary
LISA SEWELL
Deputy City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

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Sec. 70-58. - Duty of owner, occupant to cut and remove weeds, brush, and unsightly matter.

It shall be the duty of any person owning, claiming, occupying or having supervision or control of any real property, as described in sections 70-55 and 70-56, to remove, drain and/or fill all prohibited matter or conditions and to cut and remove all weeds, brush, vegetative growth, and other objectionable or unsightly matter as often as may be necessary to comply with sections 70-55 and 70-56 and to use every precaution to prevent the same from occurring or growing on such property.

(Code 1982, § 20-65; Ord. No. 99-12-99, § 2, 12-7-1999)

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Sec. 142-5. - Approval required.

- (a) Unless and until any plat or replat shall have been first approved in the manner provided by law, it shall be unlawful for any person, firm, corporation, or organization to construct or cause to be constructed any streets, utilities, drainage, public infrastructure, right-of-way improvement, or any related roadway or other public improvements within or adjacent to any tract of land, except as provided in (b) below; and any official of the city, shall not issue any permit for such improvements or to serve or connect said land, or any part thereof, or for the use of the owners or purchasers of said land, or any part thereof, with any public utilities such as water, sewers, lights, gas, etc., which may be owned, controlled, distributed, franchised, or supplied by such city, except as provided in (b) below.
- (b) From and after September 5, 2017, a plat or replat otherwise required by (a) above shall not be required prior to the constructing, repair, renovating or remodeling of one existing or new single family residential dwelling unit, private utility service lines, or any accessory residential structures, such as a barn, residential storage shed, arbor, gazebo, or swimming pool on a single, undivided tract of land in the ETJ that is not being conveyed or created from a larger tract.
- (c) No building permits will be issued for the construction of any building on any unplatted land within the corporate limits of the city. Minor repair permits may be issued. When building additions, alterations, or repairs within any 12-month period exceed 50 percent of the value of an existing building or structure on previously unplatted property, the land upon which such building or structure is located shall be platted in accordance with the provisions of this chapter.
- (d) Notwithstanding the foregoing, a building permit may be issued for one single main building on an unplatted plot, tract, or lot that faces upon a dedicated street and which plot, tract, or lot was separately owned in such configuration prior to the effective date of the ordinance from which this chapter is derived, or prior to the annexation of such plot, tract, or lot into the city, whichever is applicable. The single main building being constructed on such an unplatted plot, tract, or lot shall conform to all of the requirements of the Zoning Ordinance.

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Sec. 146-40. - Nonconforming uses and nonconforming structures.

- (a) *Purpose.* It is the declared purpose of this section that nonconforming uses be eliminated and be required to comply with the regulations of the Zoning Ordinance of the City of McKinney, Texas, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area. This section also establishes certain regulations respecting private property rights for the allowance and alteration of uses, lots, and/or structures that do not conform to currently applicable regulations, but which have been in continuous use and were in conformance with the regulations in place at the time of their inception and have been rendered nonconforming due to a change in the applicable regulations.
- (b) *Nonconforming status.* A nonconforming status shall exist under the following provisions of this chapter:
 - (1) When a use, lot, or structure, which does not conform to the current regulations of this chapter, was in existence and lawfully operating prior to April 29, 1968, and has been operating since without discontinuance.
 - (2) When a use, lot, or structure does not conform to the current regulations of this chapter, but was legally established at a prior date when the use, lot, or structure was in conformance with applicable regulations and such use, lot, or structure has been in continuous use or operation since its establishment.
 - (3) When a use, lot, or structure, which does not conform to the current regulations of this chapter, was legally established prior to and in existence at the time of annexation to the city, and has been operating since without discontinuance.
- (c) *Burden to establish legal nonconformity.* The burden of demonstrating that any use, lot, or structure is a legal nonconformity as defined by this section shall belong to the owner(s) or the proponent of such purported nonconformity.
- (d) *Continuing lawful use of property and structures.* Any nonconforming use, lot, or structure may be continued for definite periods of time as indicated herein-below subject to the board of adjustment's power of amortization:
 - (1) *Uses.*
 - a. Nonconforming uses may continue to operate indefinitely unless the use ceases to operate for a period longer than 12 months. If a nonconforming use ceases to operate for a period longer than 12 months, the nonconforming use shall be deemed permanently abandoned. The nonconforming use shall not thereafter be renewed or instituted on that property or another property in any district which does not permit the abandoned use, unless otherwise approved by the board of adjustment. For the purposes of this paragraph, the phrase "ceases to operate" shall mean to intentionally terminate operations of the nonconforming use. Any nonconforming use that does not involve a permanent type of structure and which is moved from the property shall be deemed permanently abandoned.
 - b. A nonconforming use may not be replaced by or changed to another nonconforming use.
 - c. The board of adjustment shall have the authority to reinstate the nonconforming status of a use if the board finds there was clear intent not to abandon the use even though the use was discontinued for more than 12 months. The failure of the owner and/or operator to remove on-premise signs related to the nonconforming use shall not be sufficient, as the sole evidence presented by the applicant, to establish a clear intent or an exigent circumstance not to abandon the use.
 - (2) *Structures.*
 - a. Nonconforming structures may be occupied by conforming uses and may be repaired and maintained to preserve or extend their usability.
 - b. Structures conforming to all currently applicable regulations may be constructed on nonconforming lots provided that all setbacks and yard areas are observed.

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- c. Nonconforming structures may be relocated within the same lot so long as no existing nonconformity is exacerbated.
- (3) *Lots.*
 - a. Any nonconforming lot may be replatted so long as the existing nonconformities of the lot are not exacerbated by the replat and the size of the nonconforming lot, including its various dimensional components other than lot coverage, is not reduced.
 - b. Lots containing nonconforming structures may be replatted so long as the nonconformities of the structure are not exacerbated by the replat and the size of the nonconforming lot, including its various dimensional components other than lot coverage, is not reduced.
- (4) *Certain uses and lots in nonresidential zoning districts existing on or before May 7, 2019.*
 - a. This subsection (d)(4) shall apply only to certain uses and lots in existence on or before May 7, 2019.
 - b. Single-family or two-family residential uses located in nonresidential districts may be improved, maintained, or rebuilt.
 - c. Single-family or two-family dwellings may be constructed on any vacant lot(s) located within a residential subdivision for which such vacant lot was originally-platted solely for single-family or two-family dwellings.
 - d. Any limitation on the construction or reconstruction of a single-family or two-family residential use pursuant to subsection (f) of this Section 146-40 shall not apply to single-family or two-family residential uses which meet the criteria in subsections (d)(4)a.—(d)(4)c., above.
- (e) *Expansion of nonconforming uses or structures.* A nonconforming use or structure shall not be expanded or increased, except as follows:
 - (1) A nonconforming use located within a building may be expanded throughout the existing building, provided:
 - a. No alterations to the building are required by ordinance to accommodate the expansion of the nonconforming use; and
 - b. The number of dwelling units in said building is not increased.
 - (2) The minimum single family residential lot width, depth, and/or area for the various residential zoning districts shall be in accordance with their respective district's standards, except that a lot having less width, depth, and/or area than herein required, and which lot was a lot of record prior to the adoption of this chapter, may be used for a single family residential use.
 - (3) In the MTC—McKinney Town Center zoning district, a nonconforming structure may be altered or enlarged, provided that such alteration or enlargement shall neither create any new nonconformity nor shall increase the degree of the existing nonconformity of all or any part of such structure. An alteration for a non-air-conditioned space (e.g. patio, porch, roof terrace, balcony, arcade) shall be allowed under any circumstance."
- (f) *Destruction of structure by fire, the elements, or other cause.* Subject to the provisions of subsection (d)(4) above, if a nonconforming structure is destroyed by fire, the elements, or other cause, it may not be rebuilt except to conform to the provisions of this chapter. A restoration or reconstruction in violation of this subsection immediately terminates the right to occupy the nonconforming structure except as specifically provided otherwise herein-below.
 - (1) *Partial destruction.*
 - a. In the case of partial destruction of a nonconforming structure where the damage to the structure represents less than 50 percent of its total appraised value as determined by reference to the Collin Central Appraisal District's valuation of the structure in question for the tax-year of such destruction

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("Appraisal"), reconstruction will be permitted to restore the nonconforming structure to its previously existing condition.

- b. The nonconforming structure may only be restored or reconstructed so as to have the same, but not greater, height, shape, and floor area that it had immediately prior to the damage or destruction. In addition, a nonconforming structure that is located in a Historically Significant Area or which is a Significantly Important Building may also only be restored or reconstructed so as to have the same appearance that it had immediately prior to the damage or destruction. The chief building official shall estimate the height, shape, floor area, and when applicable the appearance of the structure immediately prior to the damage or destruction, and shall consult with the property owner, if necessary, to make a determination. Should the property owner not agree with the determination of the chief building official, the property owner may appeal the determination of the chief building official to the board of adjustment, in accordance with this chapter.

(2) *Total destruction.*

- a. If a nonconforming structure is totally destroyed by fire, the elements, or other cause, it may not be rebuilt unless it adheres to all then applicable regulations. Total destruction for the purposes of this section shall mean destruction of 50 percent or more of the structure's total appraised value as determined by reference to the Collin Central Appraisal District's Appraisal.

(3) *Multi-family residential destruction.* In the case of the destruction of a multi-family residential structure or development that is nonconforming due to the adoption of Ordinance 2010-05-011 (adopted on May, 17, 2010), the following shall apply:

- a. The nonconforming structure(s) may be restored or reconstructed so as to have the same, but not greater, height, shape, and floor area than it had immediately prior to the damage or destruction if the damage to the structure(s) represents less than 50 percent of its appraised value, as determined by reference to the Collin Central Appraisal District's Appraisal. In addition, a nonconforming structure that is located in a Historically Significant Area or which is a Significantly Important Building may also only be restored or reconstructed so as to have the same appearance that it had immediately prior to the damage or destruction if the damage to the structure(s) represents less than 50 percent of its appraised value, as determined by the Collin Central Appraisal District's Appraisal.
- b. The nonconforming structure(s) may be restored or reconstructed so as to have the same, but not greater, height, shape, and floor area than it had immediately prior to the damage or destruction if the damage to the structure(s) equals or exceeds 50 percent of its appraised value, as determined by the Collin Central Appraisal District's Appraisal, but the damage to the structure(s) represents less than 50 percent of the appraised value of the overall development, as determined by the Collin Central Appraisal District's Appraisal. In addition, a nonconforming structure that is located in a Historically Significant Area or which is a Significantly Important Building may also only be restored or reconstructed so as to have the same appearance that it had immediately prior to the damage or destruction if the damage to the structure(s) equals or exceeds 50 percent of its appraised value, as determined by the Collin Central Appraisal District's Appraisal, but the damage to the structure(s) represents less than 50 percent of the appraised value of the overall development, as determined by the Collin Central Appraisal District's Appraisal.
- c. The nonconforming structure(s) must be rebuilt to all currently applicable regulations if the damage to the structure(s) equals or exceeds 50 percent of its appraised value, as determined by the Collin Central Appraisal District's Appraisal, and the damage to the structure(s) equals or exceeds 50 percent of the appraised value of the overall development, as determined by the Collin Central Appraisal District's Appraisal.
- d. The chief building official shall estimate the height, shape, and floor area and, when applicable, the appearance of the structure immediately prior to the damage or destruction, and shall consult with the property owner, if necessary, to make a determination. Should the property owner not agree

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with the determination of the chief building official, the property owner may appeal the determination of the chief building official to the board of adjustment, in accordance with this chapter.

(g) *Amortization of nonconforming uses.*

- (1) *Request to establish compliance date.* The City Council, by a simple majority vote, may request that the Board of Adjustment consider establishing a compliance date for a nonconforming use. Upon receiving such a request, the Board shall hold a public hearing to determine whether continued operation of the nonconforming use will have an adverse effect on nearby properties or the community welfare. Notice of the public hearing shall be in the manner established in Section 146-165(4)b. If, based on the evidence presented at the public hearing, the Board determines that continued operation of the nonconforming use will have an adverse impact on nearby properties, it shall call for a second public hearing to establish a compliance date for the nonconforming use.
- (2) *Factors to be considered.* The Board of Adjustment shall consider the following factors when determining whether continued operation of the nonconforming use will have an adverse effect on nearby properties or the community welfare:
 - a. The Comprehensive Plan;
 - b. The character of the surrounding or nearby properties;
 - c. The degree of incompatibility of the use with the zoning district in which it is located;
 - d. The manner in which the nonconforming use is being conducted;
 - e. The hours of operation of the use;
 - f. The extent to which continued operation of the use may threaten public health or safety;
 - g. The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor;
 - h. The extent to which public disturbances and nuisances may be created or perpetuated by continued operation of the use;
 - i. The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use; and
 - j. Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.
- (3) *Determination of amortization period.*
 - a. If the Board of Adjustment determines that continued operation of the nonconforming use has an adverse effect on nearby properties or the community welfare, it shall hold a second public hearing, in accordance with the law, to set a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period. Notice of the second public hearing shall be in the manner established in Section 146-165(4)b.
 - b. The Board of Adjustment shall request and shall have the authority to require, through the issuance of a subpoena, the owner to produce the financial documentation and records within its possession, custody or control (collectively "Documents") relating to the factors listed in subsection (3)e, below. The owner shall provide to the Board such Documents at least thirty (30) days before the second public hearing.
 - c. The Board of Adjustment shall also have the authority to request that the owner allow the City and its representatives or experts reasonable access to, upon and about the property on which the nonconforming use in question is situated together with a reasonable amount of time to examine, photograph, videotape and inspect all aspects of the nonconforming use including, but not limited to, the property, structure, fixtures, assets, records, architectural drawings, and all appurtenances thereto

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relating to the factors listed in subsection (3)e, below (collectively the “Physical Inspection”). The owner shall cooperate with the City to schedule a date and time period that is acceptable to both the Owner and the City to provide the City such reasonable access together with a reasonable amount of time to allow for the Physical Inspection at least thirty (30) days before the second public hearing.

d. If the owner does not provide the Board any requested Documents or fails to cooperate with the Board in allowing the City the ability to perform the Physical Inspection, the Board of Adjustment is authorized to make its determination of a compliance date based upon any reasonably available public records, comparisons to Physical Inspection of one or more other similar uses, as well as public or expert testimony at the hearing. Failure or refusal by owner to provide any requested Documents or to provide reasonable accommodation to perform a Physical Inspection shall not prevent the Board of Adjustment from setting a compliance date. In addition, owner’s failure or refusal to provide any requested Documents or to provide reasonable accommodation to perform a Physical Inspection shall constitute the owner’s waiver of any and all rights to challenge the qualifications of any witness providing testimony, opinions or evidence of any kind or nature to the Board submitted to the Board for its consideration in establishing a compliance date. Owner’s failure or refusal to provide any requested Documents or to provide reasonable accommodation to perform a Physical Inspection shall also result in the owner’s waiver of any and all rights to challenge any evidence, information, testimony, theories, conclusions, analysis, opinions and results submitted to the Board for its consideration in establishing a compliance date.

e. The Board of Adjustment shall provide a compliance date for the nonconforming use under a plan whereby the owner’s actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period. The following factors shall be considered by the board in determining a reasonable amortization period:

- i. The owner’s capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming;
- ii. Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages;
- iii. Any return on investment since inception of the use, including net income and depreciation;
- iv. The anticipated annual recovery of investment, including net income and depreciation; and/or
- v. A reasonable wind-up period for the nonconforming use.

(4) *Compliance requirement.* If the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless such operations constitute a conforming use.

(5) For the purposes of this section, “owner” means the owner of the nonconforming use at the time of the Board of Adjustment’s determination of a compliance date for the nonconforming use.

(h) *Decisions that cannot be immediately appealed.*

- (1) A decision by the Board of Adjustment to establish a compliance date is not a final decision and cannot be immediately appealed.
- (2) A decision by the Board of Adjustment that the continuing operation of a nonconforming use will have an adverse effect on neighboring property or the community welfare and a Board of Adjustment’s

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decision to schedule a second public hearing to establish a compliance date are not final decisions and cannot be immediately appealed.

- (i) *Decision to deny a request for a compliance date.* A decision by the board to deny a request to establish a compliance date is final unless appealed to state court within 10 calendar days in accordance with Chapter 211 of the Texas Local Government Code.
- (j) *Decision setting a compliance date.* A decision by the Board of Adjustment setting a compliance date is final unless appealed to state court within 10 calendar days in accordance with Chapter 211 of the Texas Local Government Code.
- (k) *Setting compliance date by agreement.* Nothing in this Section shall prohibit the City and the owner(s) of such nonconforming use from mutually agreeing upon a compliance date. Any such agreement shall be in writing, approved by the City Council and said owner(s), fully executed and attested by all parties, and filed in the real property records of Collin County, Texas.
- (l) *Completion of structures.* Nothing contained herein shall require any change in the plans, construction, or designated use of a structure for which a building permit has been issued or a site plan approved prior to the effective date of this section, nor shall any changes be required in the plans, construction, or designated use of a structure for which a substantially complete application for a building permit was accepted by the chief building official on or before the effective date of this section, provided that the building permit shall comply with all applicable regulations on the date that the application was filed and the building permit is issued within 30 days of the effective date of these regulations.

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Sec. 146-131. - Off-street loading.

Every building or part thereof erected or occupied for retail business, service, manufacturing, storage, warehousing, hotel, mortuary, or any other use similarly involving the receipt or distribution by vehicles of materials or merchandise, shall provide and maintain on the same premises loading space in accordance with the following requirements. These requirements shall not apply to the MTC - McKinney Town Center zoning district. For those standards that are specifically applicable to the MTC - McKinney Town Center zoning district, refer to appendix G to this zoning ordinance.

(1) For retail, commercial, sales, service, or industrial use buildings and establishments, off-street loading facilities shall be provided in accordance with the following schedule:

Square feet of gross floor area	Minimum required spaces or berths
0 to 5,000	None
5,001 to 15,000	1
15,001 to 40,000	2
40,001 to 65,000	3
65,001 to 100,000	4
Each additional 100,000	1 additional

(2) For hotels, office buildings, restaurants, and similar establishments, off-street loading facilities shall be provided in accordance with the following schedule:

Square feet of gross floor area	Minimum required spaces or berths
0 to 10,000	None

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10,001 to 50,000	1
50,001 to 100,000	2
100,001 to 200,000	3
Each additional 200,000	1 additional

(3) For multi-tenant retail shopping centers, office or industrial developments greater than 50,000 square feet in floor area, the sum of the total required loading spaces may be reduced with site plan approval. Determination shall be based on the frequency of the anticipated deliveries and the location of the loading spaces in relation to the buildings.

(4) Each required loading space shall meet the following minimum size requirements:

- a. Twelve feet by 60 feet for industrial or warehouse uses.
- b. Twelve feet by 35 feet for commercial and institutional uses.
- c. Fourteen feet minimum vertical clearance.

(5) Access and maneuvering areas shall be provided on the same building lot as the principal use for which the loading space is intended.

(6) All loading spaces shall be located within 25 feet of the building. If unique circumstances exist on the site that prohibit locating the loading space within 25 feet, the distance may be increased with site plan approval as long as the loading space is still considered usable, the location does not have an adverse impact on current or future development, and the location will have no adverse impact on the public health, safety, and general welfare.

(7) Distance from property lines shall be as follows:

- a. Any loading dock or structure and its associated loading spaces shall be:
 1. Set back a minimum distance of 200 feet from any adjacent residential use or zoning district; and
 2. Set back a minimum distance of 75 feet from any public street or front property line; and
 3. Oriented away from the street frontage.
- b. Any loading spaces not associated with a loading dock or structure shall be set back a minimum distance of 50 feet from any adjacent residential use or zoning district, and there shall be no minimum setback if the subject property abuts a non-residential use or lot line.

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- c. In instances where a property has more than one street frontage, the bay doors shall be oriented away from the street frontage with the greatest width. If the streets are the same width, then the bay doors shall be oriented away from the property's front lot line (as defined in Sec. 146-46(66)g).

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Sec. 146-132. - Fences, walls, and screening requirements.

Where a screening device is required as provided herein, the following standards shall be observed:

(1) *Fence or wall.* Refer to chapter 122, article IV, which establishes minimum construction, location, and maintenance requirements for all fences in the city.

(2) *Screening device.* A screening device shall be erected or placed in all locations and in accordance with all provisions specified below:

- a. A screening device required under this section shall meet the following minimum requirements:
 1. The minimum height of the screening device shall be as follows:
 - (i) Garbage, trash or refuse container screening: seven feet.
 - (ii) Screening of outdoor storage: seven feet.
 - (iii) All other required screening: six feet.
 2. The maximum height of the screening device shall be as follows:
 - (i) "ML", "MH" and Industrial "PD" districts: ten feet.
 - (ii) All other districts: eight feet four inches.
 3. The materials shall consist of:
 - (i) Brick masonry, stone masonry, or other architectural masonry finish; or
 - (ii) Tubular steel (primed and painted) or wrought iron fence with masonry columns spaced a maximum of 20 feet on center with structural supports spaced every ten feet, and with sufficient evergreen landscaping to create a solid screening effect; or
 - (iii) Living plant screens may be approved if the director of planning finds that this method of screening will not be detrimental to adjacent property and will provide sufficient visual screening based on the proposed location and characteristics of the project. The director of planning or his/her designee may forward the request for review to the planning and zoning commission or city council for approval or disapproval. A living plant screen shall meet one of the following conditions in order to be considered for approval without a variance:
 1. For screening a project from an adjacent residential property that has an existing fence, the living plant screen shall consist of evergreen shrubs or trees identified in the approved planting list in Appendix A-1 meeting the following requirements:
 - a. Evergreen shrubs shall be at least 3 feet in height at planting and spaced 3 feet apart on center;
 - b. Evergreen trees shall be at least 6 feet in height at planting and spaced 6 to 8 feet apart on center, as determined by the landscape administrator; or
 2. There is an existing screening device (a masonry wall, wrought iron fence) on the adjacent property; or
 3. Use of a living plant screen would result in preservation of existing trees in a wooded area as compared to another type of screening device; or
 4. For screening of overhead doors from an adjacent residential property with an existing fence, the living plant screen shall consist of evergreen trees (identified on the approved planting list in Appendix A-1), at least 6 feet in height at planting and spaced 3 feet apart on center; or
 5. For screening of overhead doors from the right-of-way, the living plant screen shall consist of evergreen shrubs identified on the approved planting list in Appendix A-1, at least 3 feet in height at planting and spaced 3 feet apart on center; or

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6. When screening heating, ventilation, and air conditioning (HVAC) equipment from the right-of-way, the living plant screen shall meet the standards identified in Sec. 146-135; or

7. Unless identified above, all living plant screens shall consist of evergreen shrubs identified as acceptable for screening at least 6 feet in height or greater in Appendix A-1 and shall meet the standards identified in Sec. 146-135.

Note: The landscape administrator may require a greater planting size and/or a different spacing pattern, depending on the characteristics of the project, in order to ensure sufficient visual screening.

(iv) Alternate equivalent screening, upon approval by the planning and zoning commission and/or city council, depending on which body has the final approval authority as indicated in section 146-45(a)(2) through the site plan process.

(v) The screening requirement may be waived by the director of planning or his/her designee or the request for a waiver thereof may be forwarded for review by the planning and zoning commission or city council, depending on which body has the final approval authority as indicated in section 146-45(a)(2). A waiver may be approved if one of the following conditions are maintained for the life of the project:

1. Sufficient screening exists on the adjacent property;
2. The portion of the subject property to be screened contains a wooded area that shall be maintained for the life of the project and a tree survey indicates that a majority of the trees in the wooded area on the subject property are found to be "quality trees," as defined in Sec. A-2 of Appendix A; or
3. The portion of the subject property to be screened is adjacent to a floodplain (as defined in Sec. 130-381).

- b. All required screening devices must be equally finished on both sides.
- c. All openings in the surface for passage shall be equipped with gates equal in height and screening characteristics specified above, but need not be of the same material as the main fence or wall.
- d. Prior to the issuance of an occupancy permit, all approved screening devices must be in place.
- e. All screening devices shall be permanently and continually maintained in a neat and orderly manner as a condition of use. The occupancy permit may be revoked by the chief building official for failure to adequately maintain such screening device.

(3) *Applicability.* Screening devices shall be placed and maintained in the following locations:

- a. Screening devices shall be placed along any property line or district boundary between any single family detached or attached or any two family zoning or use and any mobile home park, or non-residential use, but not across a dividing street between such uses. An alley shall not be considered a dividing street for purposes of this section. The more intensive use shall have the responsibility for providing and maintaining the screening device. This requirement shall not apply to the MTC McKinney town center zoning district. See section 146-132(3)(n) for residential transition area screening device standards specifically applicable to the MTC McKinney town center zoning district. Further, this requirement shall not apply to public parks, as defined in Chapter 74.
- b. Multiple family residential developments outside of the MTC McKinney town center zoning district shall provide and maintain a six-foot tall masonry screening wall along all side and rear property lines. Multiple family residential developments that are subject to the requirements of the REC regional employment center overlay district, shall be exempt from this requirement.
- c. All allowed open storage of materials, equipment, or commodities shall be screened from view from all streets. Materials, equipment, or commodities shall be stacked no higher than one foot below the top of the screening wall or visual barrier.

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- d. Garbage, trash, or refuse containers shall be screened on all sides. Screening materials shall be masonry and the same color as the exterior walls of the main structure. A solid metal gate shall be provided. Garbage, trash, or refuse containers shall not be located in front of the main building unless no other option is available. Gates shall be kept closed except when in use for access. Sanitation containers shall also meet the screening and landscaping requirements as defined in section 146-135.
- e. Sanitation containers shall be subject to the following design specifications:
 - 1. Single container enclosures shall be a minimum of 12 feet wide by 14 feet deep, as measured from the inside of the enclosure's walls.
 - 2. Double container enclosures shall be a minimum of 25.5 feet wide by 14 feet deep, as measured from the inside of the enclosure's walls.
 - 3. Trash compactor enclosures and all other enclosure types shall be constructed to the environmental waste department's specifications.
 - 4. All enclosure types shall be required a minimum of 40 feet of straight backing, as measured from the front gates of the enclosure, to accommodate a sanitation truck's maneuverability. If special circumstances prevent straight backing from being provided, the environmental waste department shall have the authority to approve angled or alternative backing movements.
 - 5. All enclosure types shall be required to provide a 24-foot vertical clear zone, unless otherwise approved by the environmental waste department.
- f. All wrecking yards, junkyards, or salvage yards shall be fenced on all sides and shall be screened from view from the public right-of-way and from adjacent residential property.
- g. Loading docks or structures, bays, and bay doors shall be screened from view from the public right-of-way, from adjacent residential property, and from adjacent non-residential property, other than industrial. The required screening device adjacent to a non-residential property, other than industrial, may be waived with site plan approval if it is determined that the location of the proposed loading docks, bays or bay doors in relation to the adjacent development's site layout is not detrimental. Bays in any retail district or retail PD district shall be oriented away from the street frontage. This requirement shall not apply to the MTC McKinney town center district. See section 146-132(3)(m) for street screening device standards specifically applicable to the MTC McKinney town center zoning district.
- h. Display of new vehicles, or used vehicles not defined as junked vehicles under chapter 62, article XI, need not be screened if they are, in the opinion of the chief building official, maintained in a neat and orderly manner.
- i. Landscaping standards for parking lots shall also apply to vehicle display lots, except that minimum screening height for vehicle display lots shall be 1½ feet.
- j. Mechanical and heating and air conditioning equipment in non-residential, mixed use, and multi-family uses shall be screened from view from the public right-of-way and from adjacent residential property. For such equipment located on the roof of a non-residential, mixed use, or multi-family structure, the screening of the equipment shall be a minimum of one foot higher than the height of the equipment. Screening material shall be consistent with the building materials of the structure on which the equipment is placed.

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- k. At motor vehicle service or repair facilities or automotive paint and body repair shops, vehicles awaiting repair for more than 24 hours or after the close of business shall be screened from view from public right-of-way and from adjacent residential property. Parking spaces used for the overnight storage of vehicles awaiting repair must be screened in accordance with the requirements of this section.
- l. Parking lots shall meet screening and landscaping requirements as defined in section 146-135.
- m. Street screening devices specifically applicable to the MTC McKinney town center zoning district: A street screening device (minimum two feet and maximum four feet high) shall be placed along any pedestrian priority "A" or "B" street frontage that is not defined by a building or driveway within the build-to zone. This required street screening device shall be placed at the front edge of the build-to zone along the pedestrian priority "A" or "B" street. The McKinney Town Center development coordinator (director of planning or designee) shall administratively approve a street screening device of either: (1) the same finishing material as the principal structure on the lot, (2) masonry (brick, stone, or architectural masonry finish), (3) a living plant screen composed of evergreen shrubs planted to be opaque at maturity, or (4) a combination of the above. See also the building form and site development standards of the MTC McKinney town center zoning district (appendix G-2).
- n. Residential transition area screening devices specifically applicable to the MTC McKinney town center zoning district: A residential transition area screening device (minimum six feet and maximum eight feet high) shall be placed along any property line between any new building construction or upper story addition to an existing building and any existing single family detached residential use. This standard shall not apply when a single family detached dwelling, single family attached dwelling, or two family dwelling is to be located adjacent to an existing single family detached residential use. This standard shall not apply when an improved public street or railroad right-of-way separates the new building construction from the existing single family detached residential use. The McKinney Town Center development coordinator (director of planning or designee) shall administratively approve a residential transition area screening device of either: (1) the same finishing material as the principal structure on the lot, (2) masonry (brick, stone, or architectural masonry finish), (3) a living plant screen composed of evergreen shrubs planted to be opaque at maturity, or (4) a combination of the above. See also the building form and site development standards of the MTC McKinney town center zoning district (appendix G-2).

(4) *Variances.* In the case of a required site plan approval, a variance to the provisions of this section, save and except subsection 146-132(3)e, may be allowed by the planning and zoning commission and/or the city council, unless otherwise specified herein, depending on which body has the final approval authority as indicated in section 146-45(a)(2), or additional provisions required, as a part of such site plan approval. The applicant shall prove that the variance from the zoning regulations is warranted under the circumstances presented. A variance may be granted if the planning and zoning commission and/or city council finds that:

- a. Unique circumstances exist on the property that make application of specific items in this section unduly burdensome on the applicant;
 - b. The variance will have no adverse impact on current or future development;
 - c. The variance is in keeping with the spirit of the zoning regulations, and will have a minimal impact, if any, on the surrounding land uses;
 - d. The variance will have no adverse impact on the public health, safety and general welfare.
- A financial hardship shall not be considered a basis for the granting of a variance.

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Sec. 146-165. - Board of adjustment.

A board of adjustment is hereby established in accordance with the provisions of Texas Local Government Code § 211.008 et seq., regarding the zoning of cities and with the powers and duties as provided in said statutes.

(1) *Organization.*

- a. *Membership.* The board shall consist of five citizens, each to be appointed or reappointed by the mayor and confirmed by the city council, for staggered terms of two years. In addition, two alternate members shall be similarly appointed to serve in the absence of one or more regular members. Each member of the board, regular and alternate, shall be removable for cause by city council upon a written charge and after a public hearing. Vacancies shall be filled by the city council for the unexpired term of any member, regular or alternate, whose term becomes vacant. The board shall elect its own chairperson from regular members, who shall serve for a period of one year or until their successor is elected.
- b. *Meetings.* Meetings of the board shall be held at the call of the chairperson and at such times as the board or chief building official may determine.
- c. *Hearings.* The hearings of the board of adjustment shall be public. The board shall hear the intervention of any owner of property adjacent to, in the rear of, or across the street from a lot as to which the granting of any building permit is pending, and shall also hear any other parties in interest. All hearings before the board must be heard by at least four members of the board.
- d. *Rules and regulations.* The board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record. The board of adjustment shall act by resolution or order. The concurring vote of at least four members of the board is necessary to:
 - 1) reverse an order, requirement, decision, or determination of an administrative official;
 - 2) decide in favor of an applicant on a matter on which the board is required to pass under a zoning ordinance; or
 - 3) authorize a variation (or variance) from the terms of a zoning ordinance.

Any request not approved by affirmative vote of four or more members shall be considered denied. The board shall adopt from time to time such additional rules and regulations as it may deem necessary to carry into effect the provisions of the ordinance, and shall furnish a copy of the same to the chief building official, all of which rules and regulations shall operate uniformly in all cases. All of its resolutions and orders shall be in accordance therewith.

(2) *Appeals.*

- a. *Procedure.* Appeals may be taken from an administrative officer's decision and may be taken to and before the board of adjustment by any person aggrieved by the decision, or by any officer, department, board, or bureau of the city affected by the decision. The appellant must file with the board and the official from whom the appeal is taken a notice of appeal specifying the grounds for the appeal. The appeal must be filed not later than the 20th day after the date the decision is made. On receiving the notice, the official from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record of the action that is appealed.
- b. *Stay of proceedings.* An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the board facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case, the proceedings may be stayed only by a restraining order granted by the board or a court of record on application, after notice to the official, if due cause is shown.

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- c. *Notice of hearing on appeal.* The board shall fix a reasonable time for the hearing of the appeal or other matters referred to it, shall give public notice of the hearing, and shall mail notices of such hearing to the petitioner and to the owners of property lying within 200 feet or less of any point of the lot or portion thereof on which a variance is desired, and to all other persons deemed by the board to be affected thereby, such owners and persons being determined according to the current tax rolls of the city. Depositing of such written notice in the mail, postage-paid, shall be deemed sufficient compliance therewith.
 - d. *Decision by board.* The board shall decide the appeal within a reasonable time, not later than the next meeting for which notice can be provided following the hearing and not later than the 60th day after the date the appeal is filed. Upon the hearing, any party may appear in person or by agent or attorney. The board may reverse or affirm, in whole or in part, or may modify the order, requirement, decision, or determination from which an appeal is taken and make such order, requirement, decision, or determination as in its opinion ought to be made, and to that end, shall have the same authority as the administrative official.
- (3) *Powers and duties of board.*
- a. *Subpoena witnesses, etc.* The board shall have the power to subpoena witnesses and records, administer oaths, and punish for contempt, and may require the production of documents, under such regulations as it may establish.
 - b. *Appeals based on error.* The board shall have the power to hear and decide appeals where it is alleged there is error in any order, requirements, decision or determination made by the chief building official in the enforcement of this chapter.
 - c. *Special exceptions.* The board shall have the power to hear and decide special exceptions to the terms of this chapter upon which the board is required to pass as follows or elsewhere in this chapter:
 - 1. To permit the erection and use of a building or the use of premises for railroads if such uses are in general conformance with the master plan and present no conflict or nuisance to adjacent properties;
 - 2. To permit a public utility or public service or structure in any district, or a public utility or public service building of a ground area and of a height otherwise in conflict with the standards provided for in the district in which such public utility or public service building is permitted to be located, when found reasonably necessary for the public health, convenience, safety, or general welfare;
 - 3. To grant a permit for the extension of a use, height and/or area regulation into an adjoining zoning district, where the boundary line of the zoning district divides a lot in a single ownership on the effective date of the ordinance from which this section is derived;
 - 4. Permit the reconstruction of a nonconforming building, which has been damaged by explosion, fire, act of God, or the public enemy, to the extent of more than 50 percent of its fair market value, where the board finds some compelling necessity requiring a continuance of the nonconforming use and the primary purpose of continuing the nonconforming use is not to continue a monopoly; and
 - 5. Waive or reduce the parking and loading requirements in any of the districts, whenever the character of use of the building is such as to make unnecessary the full provision of parking or loading facilities, or where such regulations would impose an unreasonable hardship upon the use of the lot, as contrasted with merely granting an advantage or a convenience.

The board shall also have the power to hear and decide special exceptions to the terms of chapter 122, article IV, entitled "Fences" in accordance with the requirements set forth in section 122-178.

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- d. *Variances.* The board shall have the power to authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship, and so that the spirit of this chapter shall be observed and substantial justice done, including the following:
 - 1. Permit a variance in the yard requirements of any district where there are unusual and practical difficulties or unnecessary hardships in the carrying out of these provisions due to an irregular shape of the lot, topographical or other conditions, provided such variance will not seriously affect any adjoining property or the general welfare; and
 - 2. Authorize upon appeal, whenever a property owner can show that a strict application of the terms of this chapter relating to the construction or alterations of buildings or structures will impose upon him unusual and practical difficulties or particular hardship, such variances from the strict application of this chapter as are in harmony with its general purpose and intent, but only when the board is satisfied that a granting of such variance will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variance from the zoning ordinance as established by this chapter, and at the same time, the surrounding properties will be properly protected.
 - e. *Changes.* The board shall have no authority to change any provisions of this chapter and its jurisdiction is limited to hardship and borderline cases, which may arise from time to time. The board may not change the district designation of any land either to a more restrictive or less restrictive zone. In addition, the board may not add a use or authorize a use in a zoning district where such use is not otherwise permitted save and except through the approval of a special exception under Subsection (3)c.3, hereinabove.
 - f. *Amortization of nonconforming land uses.* The board shall have the authority to establish a compliance date for nonconforming uses at the request of the City Council in accordance with Section 146-40 (Nonconforming uses and nonconforming structures) of this chapter.
- (4) *Public hearings and notices.*
- a. *Public hearings required.* Public hearings shall be required in conjunction with requests for variances and special exceptions, appeals of an administrative official's determination and appeals based on error. Public hearings shall also be required for determinations regarding legal nonconformities, the continuing lawful use of nonconforming uses and property and structures, the expansion of or changes in nonconforming uses and the reconstruction of nonconforming structures. Public hearings are also required for all matters regarding the amortization of nonconforming uses and the establishment of compliance dates.
 - b. *Notice of public hearings.* Notice of public hearings be provided as follows:
 - 1. Written notice mailed to the parties in interest and to each owner of property, as indicated by the most recently approved tax roll, lying within 200 feet or less of any point or portion of the subject property prior to the tenth (10th) day before the date of the hearing; and
 - 2. Publication in the official newspaper of the City prior to the fifteenth (15th) day before the date of the hearing.

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Sec. 146-7. Zoning district map.

- (a) The City shall establish and maintain a zoning district map on which each property's zoning designation and zoning boundary is recorded and said zoning district map shall be updated by the city from time to time as changes in any property's zoning are made. This zoning district map, which may be represented using Geographic Information Systems (GIS), shall be designated as the official zoning district map of the city. The official zoning district map is made a part of and incorporated into this chapter by reference for all purposes allowed by law.
- (b) In case of any question involving a district designation within the city, the updated copy of the official zoning district map on file in the office of the director of planning shall be presumed correct. Any person challenging the accuracy of the updated copy of the official zoning district map shall have the burden of presenting the official zoning map together with the ordinances the challenging party asserts were omitted or inaccurately recorded in amending the map to prove the inaccuracy of the updated copy.

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Public Notice Photo Requirement

Sec. 146-164. - Changes and amendments

Under the provisions of Texas Local Government Code ch. 211, the city council may from time to time amend, supplement or change by ordinance the boundaries of the districts or the regulations herein established.

- (1) *Submission to planning and zoning commission.* Before taking any action on any proposed amendment, supplement, or change in the ordinance, the city council shall submit the proposed revision to the planning and zoning commission for its review, recommendation, and report.
- (2) *Public hearing and notice.* Prior to making its report to the city council, the planning and zoning commission shall hold at least one public hearing thereon.
 - a. Written notice of all public hearings on proposed changes shall be sent to all owners of property, or to the person rendering the same for city taxes, located within 200 feet of any property affected thereby, not less than eleven days before such hearing is held. Such notice may be served by using the last known address as reflected in the most recently approved municipal tax roll from the Collin Central Appraisal District, and depositing the notice, properly addressed and postage paid, in the United States mail.
 - b. Prior to adopting any proposed amendment, supplement, or change to the schedule of uses or any other section of this chapter, a public hearing shall be held at a planning and zoning commission meeting, followed by a public hearing held at a city council meeting at which action is taken. Notice of each public hearing shall be given by publication one time in a newspaper of general circulation in the city, stating the time and place of such hearing, which time shall not be earlier than 16 days from the first date of publication.
 - c. Requirement to post zoning change signs. All zoning changes or amendments, including zoning, rezoning, amendments to planned developments, meritorious exceptions to the architectural standards as provided for in section 146-139, specific use permits, and the like, although specifically exempting site plan approval for site plans within a PD unless part of an SUP approval that requires a site plan, shall be required to have an official sign, notifying the public of any proposed zoning changes or amendments, posted prior to planning and zoning commission consideration and the sign maintained throughout the zoning change process.
 1. The director of planning shall have the authority to determine if the notice posting on the subject property met the intent of the requirements contained herein.
 2. Process. The following requirements shall apply to the posting of a zoning change sign:
 - (a) The applicant shall be responsible for posting the required number of notification signs on the subject property at least seven (7) days prior to the planning and zoning commission consideration of the application and for maintaining the required signs throughout the zoning change process.
 - (b) The applicant shall be responsible for submitting accurate time-stamped photos to the planning department of the posted notice in order to confirm the date of posting. The photos shall be submitted no earlier than on the Monday at 8:00 a.m., one week prior to the Tuesday planning and zoning commission meeting, and no later than 12:00 p.m. (noon) on the Wednesday prior to the Tuesday planning and zoning commission meeting at which the public hearing is scheduled. Photos shall include one (1) up-close, legible photo of each sign and one (1) photo of each sign taken from a distance of approximately 10 feet away in order to show the sign in context on the subject property. In addition to photos of individual signs, the applicant shall provide a minimum of one photo from each right-of-way showing the posted signs facing the right-of-way. Examples of acceptable verification photos may be found in the zoning/rezoning application checklist packet provided by the planning department.

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- (c) The applicant shall furnish an affidavit to the planning department together with the time-stamped photos, required in subsection (2)c.2.(b) of this section, certifying that the required sign was posted on the subject property on or before the seventh day prior to the said commission meeting and that the required time-stamped photos are true and correct.
 - (d) Failure to post the sign at least seven (7) days prior to the planning and zoning commission public hearing and to submit the required photo evidence and accompanying affidavit of timely posting shall result in the postponement of the zoning change consideration by the commission. The applicant shall be subject to an additional fee to republish and/or re-notify due to such postponement.
 - (e) The applicant shall furnish a follow-up affidavit to the planning department no earlier than on the Monday at 8:00 a.m., one week prior to the Tuesday city council meeting, and no later than by 12:00 p.m. (noon) on the Wednesday prior to the Tuesday city council meeting at which the public hearing is scheduled, certifying that the required sign was maintained on the subject property from the time frame required for the planning and zoning commission's consideration in a manner consistent with the requirements contained herein to the date of such follow-up affidavit and that the applicant will continue to maintain the required sign on the subject property until the city council holds a public hearing to consider the application.
 - (f) For special meetings, the director of planning shall set a sign posting schedule which meets the intent and purpose contained herein.
3. Maintenance of zoning change signs.
- (a) The applicant shall be responsible for maintaining the sign on the subject property throughout the zoning change process. The city is not responsible for monitoring the required zoning change signs.
 - (b) Should the city discover through routine duties related to other aspects of their daily functions that the sign is not being maintained, the city shall contact the applicant to investigate and, if needed, correct the situation. An affidavit from the applicant certifying that the applicant has corrected the posting shall indicate that the intent of the posting requirement was met.
 - (c) Failure to maintain the sign during the process shall not result in the postponement of the zoning change consideration so long as the applicant attempted to replace damaged or missing signs upon notification.
 - (d) The applicant shall be responsible for removing the sign from the subject property within two weeks of the final action by the city.
4. Sign specifications: All required zoning change signs shall be official city signs.
- (a) Zoning change signs shall be obtained from a vendor that can provide signs which are designed to meet the specifications noted herein. A list of sign vendors meeting the required criteria is available in the zoning/rezoning application on the planning department's website.
 - (b) Costs of procuring, installing or replacing signs shall be at the applicant's expense.
 - (c) All required signs shall be approximately four feet by four feet in size, as approved by the director of planning.
 - (d) All required signs shall state the requested action, a telephone number at the city where additional information may be requested, and other information deemed relevant, as may be needed and as approved by the director of planning.
5. Sign locations.
- (a) All required signs shall be posted in unobstructed view on private property and in a manner in which they can be clearly read from the public right-of-way.

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- (b) On tracts of land with frontage on public right-of-way greater than 250 feet, additional signs shall be posted so that each sign is no greater than approximately 200 feet apart.
- (c) On corner lots, a single sign may be posted at the intersection of the two streets if the frontage on either street does not exceed 250 feet.
- d. Notice of hearings on proposed changes in zoning regulations affecting the city in general shall be accomplished by one publication one time in a newspaper of general circulation in the city stating the time and place of such hearing, which time shall not be earlier than 16 days from the first date of publication.

(3) *Commission report.* The commission, after the public hearing is closed, shall make a recommendation based on its evaluation of the request and of the relationship of the request to the adopted city plan, and staff shall prepare a written report of the commission's recommendation to the city council. The commission may defer its report for not more than 90 days until it has had opportunity to consider other proposed changes which may have a direct bearing thereon. In making its determination, the commission shall consider the following factors:

- a. Whether the uses permitted by the proposed change would be appropriate in the area concerned;
- b. Whether adequate public school facilities and other public services exist or can be provided to serve the needs of additional residences likely to be constructed as a result of such change, and the consequences of such change;
- c. Whether the proposed change is in accord with any existing or proposed plans for providing public water supply and sanitary sewers to the area;
- d. The amount of vacant land currently classified for similar development in the vicinity and elsewhere in the city, and any special circumstances, which may make a substantial part of such vacant land unavailable for development;
- e. The recent rate at which land is being developed in the proposed zoning district, particularly in the vicinity of the proposed change; and
- f. How other areas designated for similar development will be, or are likely to be, affected if the proposed amendment is approved, and whether such designation for other areas should be modified also.

(4) *Council hearing.* After receipt of the commission report, a public hearing shall be held by the city council before adopting any proposed amendment, supplement, or change to the ordinance. Notice of such hearing shall be given by publication one time in a newspaper of general circulation in the city, stating the time and place of such hearing, which time shall not be earlier than 16 days from the first date of publication.

(5) *Negative recommendations; written protest procedures.*

a. *Favorable vote required.* An amendment, supplement, or change shall not become effective except by favorable vote of three-fourths of all members of the council:

- 1. If the commission recommends denial of the proposed change; or
- 2. If a written, signed protest is filed by owners of at least 20 percent of either:
 - (i) The area of the lots or land covered by the proposed change; or
 - (ii) The area of the lots or land immediately adjoining the area covered by the proposed change and extending 200 feet from that area including any streets and alleys.

b. *Written protest procedures.* The form of the protest shall be as follows:

- 1. A protest must be in writing and, at a minimum, contain the following information:
 - (i) A description of the zoning case at issue;
 - (ii) The names of all persons protesting the proposed change in zoning district classification or boundary;
 - (iii) A description of the area of lots or land owned by the protesting parties that is either covered by the proposed change or located within 200 feet of the area covered by the proposed change;

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- (iv) The mailing addresses of all persons signing the protest; and
- (v) The date and time of its execution.

2. The protest must bear the original signatures of all persons required to sign under subsection (5)c of this section and acknowledged under subsection (5)d of this section.

c. *Required signatures.*

1. A protest must be signed by the owner of the property in question, or by a person authorized by power of attorney to sign the protest on behalf of the owner. In the case of non-community property owned by two or more persons, the signature by any one owner of the property, or by a person authorized by power of attorney to sign the protest on behalf of any one owner, binds the entire property to the protest. In the case of community property, the written protest of one spouse will bind the property in its entirety.
2. In the case of property owned by a corporation, the protest must be signed by the president, a vice-president, or by an attorney-in-fact authorized to sign the protest on behalf of the corporation. In the case of property owned by a general or limited partnership, the protest must be signed by a general partner or by an attorney-in-fact authorized to sign the protest on behalf of the partnership.
3. Lots or land subject to a condominium regime are presumed to be commonly owned in undivided interests by the owners of all condominium units and under the control of the governing body of the condominium. For such lots or land to be included in calculating the lots or land area protesting a proposed rezoning, the written protest must state that the governing body of the condominium has authorized a protest in accordance with procedures required by its bylaws, and that the person signing the protest is authorized to act on behalf of the governing body of the condominium. A written protest signed by the owner of an individual condominium unit shall not be accepted unless the filing party produces legal documents governing the condominium which clearly establish the right of an individual owner to act with respect to his respective undivided interest in the common elements of the condominium.
4. When signatures must be acknowledged by a notary public. Except as otherwise provided in subsections (5)c.2 and 3 of this section, all signatures on a written protest, whether by petition or letter, must be acknowledged before a notary public as provided herein. The notary requirement is fulfilled if the person who obtains the signatures signs a certification (known as a jurat) stating:
 - (i) That he witnessed those signatures; and
 - (ii) That the signatory represented his authority to sign the petition.
5. The city shall be required to forward to the owners entitled to notice hereunder, in addition to the required notice, a reply form for the lodging of protests. A signature on an original reply form sent by the city to the mailing address of the property owner need not be acknowledged before a notary public.
6. A signature on a protest delivered in person by the person signing need not be acknowledged before a notary public if its reliability is otherwise established to the satisfaction of the city secretary. In such a case, a summary of the evidence of reliability considered by the city secretary must be endorsed on the protest by the city secretary.

d. *Filing deadline.*

1. A written protest must be filed with the city secretary before 5:00 p.m. of the fourth working day immediately preceding the date advertised for the city council public hearing in the statutory notice published in the official newspaper of the city. For example, a written protest must be received by 5:00 p.m., on the Wednesday prior to a regularly scheduled Tuesday council meeting. A protest sent through the mail must be received by the city secretary before the deadline.

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2. Before the public hearing on the case begins, the filing deadline is automatically extended whenever the public hearing is re-advertised in the official newspaper of the city pursuant to statutory notice requirements.
3. After the public hearing has begun, the filing deadline may only be extended by calling a subsequent public hearing and advertising that public hearing in the official newspaper of the city pursuant to statutory notice requirements or if the item is tabled or continued. In such a case, the new filing deadline is noon of the second working day immediately preceding the newly advertised public hearing date or the date to which the item is tabled or continued.

e. *Withdrawal of protests once filed.* A protest, once filed, remains in effect unless withdrawn in accordance herewith, irrespective of any amendments made to the zoning proposal. Requests to withdraw protests that have been filed must be in writing and filed with the city secretary before the filing deadline. The provisions of this subsection (5) governing the form and filing of protests apply equally to withdrawals.

f. *Presumptions of validity.*

1. In all cases where a protest has been properly signed pursuant to this subsection, the city shall presume that the signatures appearing on the protest are authentic and that the persons or officers whose signatures appear on the protest are either owners of the property or authorized to sign on behalf of one or more owners as represented.
2. The city attorney may advise the city council that the presumption in subsection (5)f.1 of this section should not be followed in a specific case based on evidence presented.

g. *Conflicting instruments.* In the event that multiple protests and withdrawals are filed on behalf of the same owner, the instrument with the latest date and time of execution controls.

(6) *Limitation on resubmission of petition.* No amendment, supplement, change, or repeal of any section of this chapter, which has been legally rejected by the city council shall be again considered either by the planning and zoning commission or the city council before the expiration of one year from the date of the original action.

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Sec. 146-84. – BN – Neighborhood Business District

- (a) *Purpose.* The "BN" - Neighborhood Business zone is designed to provide for limited commercial uses serving the common and frequent needs of the residents of the immediate vicinity. Zoning or rezoning to this classification will not generally be permitted after July 1, 2014.
- (b) *Permitted uses.* The following uses are permitted in the "BN" - Neighborhood Business zone:
 - (1) Uses indicated as being permitted in the "BN" - Neighborhood Business zone in the schedule of uses; and
 - (2) Motor vehicle fuel sales only with facilities to fuel not more than four vehicles at one time (not a gasoline service station), which does not conduct any type of automotive repairs or servicing and motor vehicle fuel sales only with facilities to fuel not more than eight vehicles at one time which does not conduct any type of automotive repairs or servicing; provided that the gas pumps are located within 350 feet of the intersection of two arterial roadways as shown on the thoroughfare plan. Additionally, no stock of goods may be displayed out of doors with the exception of lubricants and additives for frequent sale, and no lighting may be constructed to shine on neighboring properties used for residential purposes. A maximum of two brand identification signs shall be allowed if their only illumination is non-flashing and shall not contain a rotating, oscillating or revolving beam or beacon of light. Such signs may be installed at the property line and shall conform to chapter 134 (see section 146-41 for regulations concerning specific use permit approval of facilities to fuel more than four and eight vehicles with location criteria at one time).
- (c) *Permitted accessory uses.* The following accessory uses are permitted in the "BN" - Neighborhood Business zone:
 - (1) All signs shall be flat against the wall of the building with all parts of the sign within 18 inches of the face of the building or on the roof within the height limit and shall not be illuminated so as to shine on nearby residential properties, except as otherwise provided herein. Illumination shall be non-flashing and shall not contain a rotating, oscillating or revolving beam or beacon of light.
- (d) *Space limits.* The following space limits shall apply to the "BN" - Neighborhood Business zone:
 - (1) Minimum width of lot: 50 feet. Parking and landscaped areas may be included in this calculation.
 - (2) Minimum depth of lot: None for business.
 - (3) Maximum height of building: 35 feet, including roof signs and pylons.
 - (4) Minimum side yard: five feet when abutting a residential zone; none abutting business.
 - (5) Minimum side yard at corner: 25 feet. The 20 feet of a required corner side yard adjacent to the building may be used for the parking of automobiles.
 - (6) Maximum lot coverage: 70 percent.
 - (7) Maximum floor area ratio: one to 1.67 (0.6:1.0).
 - (8) All other space limits identified as being applicable to the "BN" - Neighborhood Business zone in Appendix F of the zoning ordinance.

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Sec. 146-99. - REC regional employment center overlay district (suffix).

- (a) *Purpose.* The REC regional employment center overlay district is designed to provide design standards for the development of properties north of State Highway 121 between FM 2478 (Custer Road) and U.S. Highway 75 (Central Expressway). State Highway 121 is planned as a future freeway connecting U.S. Highway 75 (Central Expressway) to the Dallas/Fort Worth Airport. These standards recognize the significance of State Highway 121 as a proposed freeway and the importance of the Regional Employment Center (REC) as a coherent and largely undeveloped expanse of land, quite unique among all undeveloped properties in the city (see appendix B to this chapter).
- (b) *Areas encompassed.* The area encompassed by these standards shall include all those properties that extend generally from the centerline of State Highway 121 northward to FM 720 and including some properties north of FM 720. This district will span from FM 2478 (Custer Road) to U.S. Highway 75 (see appendix B to this chapter).
- (c) *Applicable regulations.* All applicable regulations for use, yards, area, lot dimensions, utility placement, urban design and landscaping shall be those specified for each district, including planned development stipulations. Where any of the above conflict with those of the overlay district, the standards in this chapter and the associated "Urban Design Standards for the Regional Employment Center (REC)" shall prevail except for zoning that existed prior to the effective date of the ordinance from which this chapter is derived. For such properties, the permitted densities, permitted uses, and general lot development or site plan development standards as set forth in the existing zoning district shall apply. However, all other REC overlay district standards shall apply to such properties. The REC overlay district shall no longer be applicable to properties zoned on or after June 1, 2015. Additionally, zoning or rezoning to this classification will not be permitted after June 1, 2015.
- (d) *General provisions.*
 - (1) The minimum size of a development or portion of a development to be used in making calculations to determine compliance with the requirements of this chapter is 40 acres, unless a waiver is granted by the director of planning.
 - (2) The maximum size of a development or portion of a development to be used in making calculations to determine compliance with the requirements of this chapter is 200 acres. Tracts larger than 200 acres shall be developed as multiple neighborhood developments, each individually subject to all such provisions of this chapter, unless a waiver is granted by the director of planning.
- (e) *Development and/or redevelopment.* Development and/or redevelopment shall meet the following landscaping requirements: A landscape plan shall be submitted as per the landscape requirements of section 146-135, and as amended. The landscape plan shall be approved in conjunction with the associated site plan. Landscaping shall be provided in a manner that is in keeping with the spirit of the "Urban Design Standards for the Regional Employment Center Overlay District (as described in Appendix B, Section B2 of this Chapter).

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Sec. 146-139(f)(8)

(9) Other non-residential uses in non-industrial districts (*This provision is only applicable to buildings located within a Historically Significant Area*).

a. *Exterior finishing materials.*

1. All elevations for buildings that are three stories or smaller in height shall be finished with at least 50 percent masonry finishing materials. All elevations for buildings that are taller than three stories in height shall feature a minimum of 25 percent masonry finishing materials.
2. Acceptable exterior finishing materials for the remainder of the building include:
 - i. Masonry (brick, stone, synthetic stone which includes, but is not limited to limestone, granite, and slate);
 - ii. Stucco;
 - iii. EIFS;
 - iv. Architecturally finished CMU;
 - v. Glass curtain wall systems;
 - vi. Architecturally finished metal panels (does not include corrugated metal);
 - vii. Lap siding (lap siding may include but not be limited to wood or cementitious fiber lap siding but does not include vinyl lap siding or sheet siding fabricated to look like wood lap siding, which sheet siding is prohibited);
 - viii. Architectural wood accents that are not to exceed more than 20 percent of any elevation; and
 - ix. Another material that is visually and physically indistinguishable from one of the aforementioned exterior finishing materials, subject to review and approval by the director of planning.
3. Percentages shall be calculated exclusive of doors, windows and trim.

b. *Exterior colors.*

1. A minimum of 80 percent of all building elevations shall be finished with complimentary neutral, cream, or deep, rich, non-reflective earthtone colors.
2. No more than 20 percent of any building elevation may be finished with bright, pure tone primary or secondary colors. These colors shall be limited to use on accent features including, but not limited to window and door frames, moldings, cornices, canopies, and awnings.
3. These percentages may be modified by up to 10 percent by the director of planning in special cases if the building's elevations maintain sufficient visual continuity.

c. *Building massing.*

1. All buildings shall utilize facade offsets and appropriate fenestration to add architectural variation and visual interest to an elevation and to break up long uninterrupted walls or elevations.
2. At a minimum, elevations that are 50 feet or longer in horizontal length shall be interrupted by at least two offsets (projection or recess) from the primary facade plane of at least 18 inches in depth. This requirement may be suspended or reduced in limited cases by the director of planning if a proposed building features sufficient architectural interest and composition to make this requirement unnecessary.

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Images 1, 2 & 3. Examples of Appropriate Building Massing

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d. Fenestration.

1. Windows shall appear as holes that are punched through walls rather than an appendage to the wall. This shall be accomplished through the use of recessed windows, awnings, sills, drip caps, projecting trim casings or surrounds, projecting muntins or mullions and/or other elements which cause the formation of shadows on the window and the adjacent façade.
2. Windows shall be utilized and scaled appropriately so as to remain proportionate to the wall plane within which they are located.



Images 4, 5, 6 & 7. Examples of Appropriate Fenestration

e. Roof treatment.

1. Long uninterrupted roof lines and planes that are visible from the public right-of-way or are oriented to properties zoned or used for residential purposes shall be broken into smaller segments through the use of appropriately scaled gables and/or dormers, changes in height, changes in roof form, type or planes which typically correspond to offsets in the building's facade, or other appropriate architectural elements. This requirement may be suspended or reduced in limited cases by the director of planning if a proposed building features sufficient architectural interest and composition to make this requirement unnecessary.

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2. Parapet roof lines shall feature a well-defined cornice treatment or another similar architectural element to visually cap each building elevation.



Images 8, 9 & 10. Examples of Appropriate Roof Treatments

f. Additional requirements.

1. Buildings constructed on a pad site within a larger shopping center or non-residential development shall be designed to be architecturally consistent with the other buildings within the development. Architecturally consistent shall generally mean utilizing the same or similar architectural design elements, colors, roof type, and/or building materials.
2. Additions to existing buildings shall be designed to match the architectural design features and finishing materials of the existing building to the extent possible.
3. The primary entrance for all buildings shall feature a protected entry through the use of a recessed entry, porte-cochere, awning, canopy or similar architectural feature that serves the same purpose. The covering shall be no smaller than three feet in depth when measured from the face of the

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adjoining facade. Awnings shall be properly maintained by the building owner over time and shall be replaced if they became faded, tattered or otherwise visibly worn.



Images 11, 12 & 13. Examples of Appropriate Entry Treatments

4. Buildings shall utilize glass with a low reflectivity level.
5. All elevations of each building that are visible from the public right-of-way or are oriented to properties zoned or used for residential purposes shall share the same architectural features and design as the front building elevation.
6. All buildings and/or their corresponding sites shall provide at least one of the following:
 - i. The building achieves a LEED certification or other green building certifications as approved by the director of planning.
 - ii. All building elevations feature 100 percent masonry finishing materials.
 - iii. All building elevations that are visible from the public right-of-way or are oriented to properties zoned or used for residential purposes feature at least three types of complimentary masonry finishing materials.
 - iv. All building elevations that are visible from a public right-of-way or are oriented toward properties zoned or used for residential purposes shall feature at least two facade offsets (recess or projection) of at least five feet in depth for every 50 feet of horizontal length.
 - v. All building elevations that are visible from the public right-of-way or are oriented toward properties zoned or used for residential purposes feature at least three distinct roof lines.

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- vi. All primary and secondary building entrances, excluding emergency exits and service doors, feature a recessed entry, canopy, awning, or similar sheltering feature of at least 50 square feet.
- vii. At least 75 percent of the building's required off-street parking is provided within a structured parking facility.
- viii. The building's required off-street parking is screened from the view of a public right-of-way or properties zoned or used for residential purposes by a four-foot tall masonry wall, planter box, berm or evergreen landscaping.
- ix. The building is designed with a strong base, distinctive middle section and a well-defined cornice feature (tripartite building composition) in order to create a visual sense of organization.

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Sec. 146-162. - Administrative official.

- (a) The provisions of this chapter shall be administered and enforced by the planning director or their designee.
- (b) The chief building official or any duly authorized person shall have the right to enter upon any premises at any reasonable time for the purpose of making inspections of buildings or premises necessary to carry out his duties in the enforcement of this chapter.
- (c) Whenever any construction work is being done contrary to the provisions of this chapter, the chief building official may order the work stopped by notice in writing served on the owner or contractor doing or causing such work to be done, and any such persons shall forthwith stop such work until authorized by the chief building official to proceed with the work.