

ORDINANCE NO. 2023-10702

AN ORDINANCE AMENDING PART II OF THE CITY OF IRVING LAND DEVELOPMENT CODE, “UNIFIED DEVELOPMENT CODE (UDC)” AS FOLLOWS: AMENDING SECTION 3.3 “ALCOHOLIC BEVERAGES; SALE, SERVING, OR STORAGE” TO AMEND REGULATIONS FOR THE SALE OF ALCOHOL FOR ON PREMISE CONSUMPTION IN THE CITY OF IRVING; AMENDING SECTION 1.12.5 “ADMINISTRATIVE AMENDMENTS” TO ADD PROVISIONS FOR AMENDMENTS TO APPROVED R-AB SITE PLANS; AMENDING SECTION 2.5.6 “NEIGHBORHOOD COMMERCIAL (C-N)” TO ALLOW FOR OUTDOOR DINING; AND AMENDING SECTION 9.3 “DEFINITIONS” TO ADD OR AMEND DEFINITIONS; PROVIDING FOR CONFLICT RESOLUTION, A SEVERABILITY CLAUSE, A SAVINGS CLAUSE, A PENALTY, AND AN EFFECTIVE DATE.

WHEREAS, food and beverage sales are critical to the financial success of local facilities and promote and enhance the use and enjoyment of such facilities by tourists, convention registrants, and residents; and

WHEREAS, adequate assurances of safe business practices will be obtained through thorough review and contract obligations of any vendors operating in City owned facilities; and

WHEREAS, on August 10, 2021 and September 9, 2021, the Irving Convention and Visitor’s Bureau (ICVB) Destination and Development Committee expressed concerns about the barriers to open and operate a restaurant with alcohol service including the cost and time that is necessary through the existing rezoning, the differences and inconsistencies within the businesses in the city, and the barriers to serve alcohol outside of a food service establishment, and

WHEREAS, on September 27, 2021 the Irving Convention and Visitor’s Bureau (ICVB) Board of Directors adopted a resolution supporting amendments to regulations controlling the sale and serving of alcoholic beverages; and

WHEREAS, on October 1, 2021 the Hotel Association of North Texas provided a letter in support of amendments to the SP-1 (R-AB) zoning process; and

WHEREAS, on October 14, 2021 city staff briefed the City of Irving City Council on the proposed Alcoholic Beverage regulations, they expressed support thereof, and directed staff to proceed with the adoption process; and

WHEREAS, on November 1, 2021 the Board of Directors of the Irving-Las Colinas Chamber of Commerce adopted a resolution supporting amendments; and

WHEREAS, on November 1, 2021 and January 18, 2022 city staff briefed the Planning and Zoning Commission on the proposed Alcoholic Beverage regulations who provided additional feedback; and

WHEREAS, the City has also received communications from individual businesses affected by the ordinance as written; and

WHEREAS, on August 4 and September 15, 2022 city staff briefed the City of Irving City Council on the proposed Alcoholic Beverage regulations, and who expressed support of revised amendments thereof; and

WHEREAS, on November 10 and December 8, 2022 the Irving City Council reviewed a draft of the proposed alcoholic beverage regulations, expressed support thereof with some revisions, and directed staff to proceed with the adoption process; and

WHEREAS, on January 17, 2023 city staff briefed the Planning and Zoning Commission on the proposed Alcoholic Beverage regulations, who expressed support thereof, and directed staff to proceed with the adoption process; and

WHEREAS, on February 6, 2023, after notice and public hearing, the Planning and Zoning Commission considered the proposed amendments and made their final report; and

WHEREAS, after notice and public hearing, and upon consideration of the recommendation of the Planning and Zoning Commission and of all testimony and information submitted during the public hearing, the City Council has determined that amending Unified Development Code Sections 3.3 “Alcoholic Beverages; Sale, Serving, or Storage,” Section 1.12.5 “Administrative Amendments,” Section 2.5.6 “Neighborhood Commercial (C-N),” and Section 9.3 “Definitions” is in accordance with the comprehensive plan, is in the best interest of the public, and is for the purpose of promoting the health, safety, morals, and general welfare of the citizens and protecting and preserving places and areas of historical, cultural, or architectural importance and significance.

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

SECTION 1: That Section 3.3 “Alcoholic Beverages: Sale, Serving, or Storage” of the City of Irving Unified Development Code is amended to read as follows:

3.3 Alcoholic Beverages

- 3.3.1 Notwithstanding any other provision of this ordinance, the storage, possession, sale, serving, or consumption of any alcoholic beverages, when permitted by the laws of the State of Texas, shall be regulated and governed by the use regulations and requirements within this Section. The Texas Alcohol Beverage Commission may be abbreviated as TABC throughout this Section.
- 3.3.2 ***Uses Permitted.*** After compliance with all codes of the City of Irving, compliance with the Texas Alcohol Beverage Code, compliance with Texas Alcohol Beverage Commission rules and regulations, and receipt of a Certificate of Occupancy, an Alcohol Beverage Establishment may operate within a zoning district in accordance with this section.
 - a) Restaurants, hotels, retail, service, or entertainment establishments identified as a permitted use in zoning districts as provided in Section 2.5.2, Nonresidential Land Use Table shall be permitted to sell alcohol for on premises consumption at a maximum of 40% food gross revenue to 60% alcohol gross revenue with R-AB zoning as provided in Sect. 3.3.3 below.

- b) Restaurants, retail, service, or entertainment establishments identified as a permitted use within the Urban Business Overlay District (UB), the Heritage Crossing District (HCD) including properties zoned S-P-1/R-AB within the HCD perimeter, and Planned Unit Development District 6 (PUD6) are permitted to sell alcohol for on premises consumption at a ratio of a maximum of 30% food gross revenue to 70% alcohol gross revenue with R-AB zoning as provided in Sect. 3.3.3 below.
- c) It shall be unlawful for any person to manufacture, distill, brew, import, transport, or store any alcoholic beverages for purposes of sale or distribution in any residentially zoned district within the City of Irving.

3.3.3 ***Application***

- a) *Restaurant With Attendant Accessory Use Of The Sale Of Alcoholic Beverages For On-Premises Consumption (R-AB) Zoning Required.* The storage, possession, sale, serving, or consumption of any alcoholic beverages to be sold or served by the holder of a mixed beverage permit or the holder of a private club permit issued by the State of Texas, in bottles or any other container direct to the customer or person for consumption on the premises of the holder of a mixed beverage permit or in a private club, shall be permitted only in a restaurant as defined in Chapter 9, Definitions, within a S-P-1 site plan district under [section 2.7.3](#) of this ordinance after the applicant has made a written request for a change in zoning under said [section 2.7.3](#) of this ordinance to permit such use.

- b) *Application.*

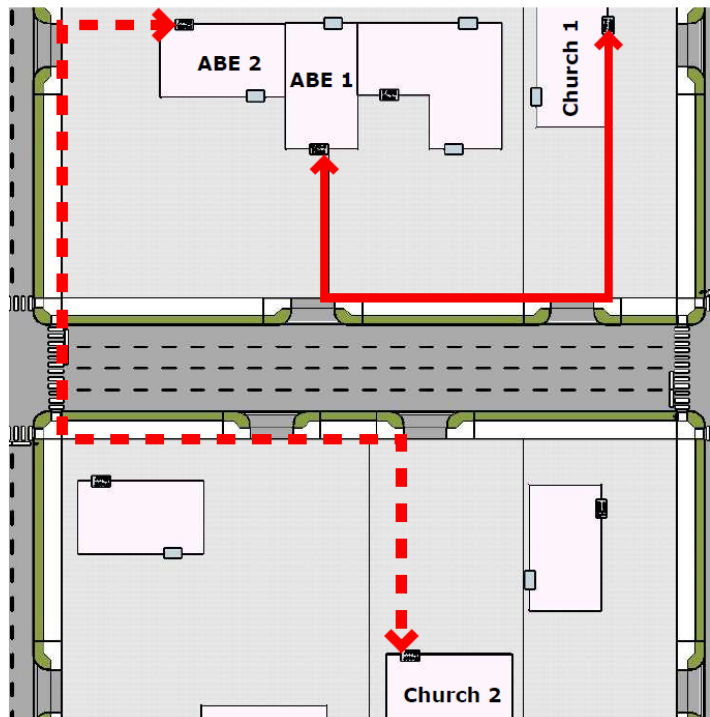
- 1) All persons applying for a zoning designation of S-P-1 (R-AB) pursuant to this section shall sign an application that includes all material required to be submitted by this ordinance.
 - 2) A nonrefundable filing fee according to the latest fee schedule approved by the City Council shall accompany each application for S-P-1 (R-AB) zoning.
 - 3) Failure to submit complete plans, data and information required to accompany a zoning application by this [section 3.3](#), within three (3) months of filing of the case shall result in a presumption that the case has been withdrawn and the city staff may close the file and process same no further.
- c) *Required Submittals.* The site plan to be submitted pursuant to said [section 2.7.3](#) shall satisfy all of the requirements of [section 2.7.3](#) and the following additional requirements:
 - 1) The specifically delineated area to be zoned for restaurant S-P-1 (R-AB) and all areas necessary to provide adequate and necessary ingress-egress and parking. Only within the area specifically delineated (R-AB) may alcoholic beverages be sold for consumption on premises. Provided, however, the holder of a mixed beverage permit operating an accessory use within a hotel that includes the zoning designation of S-P-1 (R-AB) may deliver mixed beverages, including wine and beer, to individual rooms of the hotel pursuant to section 28.01(b) of the Alcoholic Beverage Code of the State of Texas.

- 2) Narrative description of the planned activities in the restaurant which includes projected breakdown of revenues between food sales and sales of alcoholic beverages and any use of the restaurant premises for dancing, gaming devices, and/or electronic amusement games.
 - d) All persons applying for and receiving approval of S-P-1 (R-AB) zoning under this ordinance shall commence construction as evidenced by receipt of a building permit for the restaurant in accordance with the approved site plan within twelve (12) months of the zoning being approved. The city reserves the right and the applicant shall acknowledge the right of the city to rezone subject property in the event construction is not commenced within the stated twelve-month period.
- 3.3.4 ***Amendments to S-P-1 R-AB district.*** Minor amendments and adjustments may be made to a R-AB district as permitted in section 1.12.5. Any change to a R-AB district that does not qualify for an administrative amendment shall complete the rezoning process for City Council consideration of the change.
- 3.3.5 ***TABC Permit or License Required.*** No person shall sell alcoholic beverages within the city without obtaining a city certification to sell alcoholic beverages at a specific address, maintaining a valid TABC license or permit for that location, and paying all appropriate fees to the City. A TABC license or permit does not grant the holder any right to violate the city's zoning ordinance or any other city regulations.
- a) Fees. Upon application for certification from the city, the applicant shall pay the City a fee in the maximum amount permitted by law for the particular license or permit issued by the Texas Alcoholic Beverage Commission, except when said fee is waived according to the provisions of the Texas Alcoholic Beverage Code. Following payment of the fee and certification of compliance with this ordinance, as set forth herein, the City Secretary shall certify the TABC license/ permit application for that location. A refund of the fees levied under this section may not be made for any reason.
 - b) Permit Renewals. Within 30 days of confirmed renewal of a TABC license or permit, the operator shall submit to the city: a) a copy of the license/ permit renewal as provided by TABC and b) the appropriate fee due to the city. If TABC requires certification by the city that will not be considered a renewal and shall be processed as an initial application.
 - c) Change of business name, location, or ownership. Upon change of business name, location, or ownership, any person selling alcohol in the City of Irving shall provide the city a copy of the completed TABC Location Packet for Reporting Changes or Business Packet for reporting changes and any fee, if applicable. Any change in the operations of an establishment covered by this section that requires a change in the TABC license shall also be submitted to the city to update the record of the permit. If TABC requires certification by the city the change may require the completion of an initial application as provided in this section.
- 3.3.6 ***Sales Near Protected Uses.***

- a) Religious Facility, School, Hospital or Residential. The sales and serving for on-premises consumption and retail sales for off-premises consumption shall not be permitted within 300 feet of a religious facility, public or private school, or public hospital. The sales of alcohol for on-premises consumption with a mixed beverage permit or on the premises of a private club shall not be permitted within three hundred (300) feet of any property zoned or classified R-40, R-15, R-10, R-7.5, R-6, R-3.5, R-2.5, R-MF, R-MF-1, R-MF-2, R-MF-3, R-TH, R-MH, R-ZL, R-PH, and R-XF and any property actually used for residential purposes irrespective of its zoning category.
- b) Exemptions. The regulations contained in this subsection shall not apply when the business for which a permit or license is requested is located on property within the Urban Business Overlay District, Planned Unit Development (PUD) 6, is zoned or has a development plan for Transit Oriented Development District, or is a City-owned property.
- c) Measurements.
 - 1) The measurement of the distance between the place of business where alcoholic beverages are sold and a church, public hospital or R district or residential use as provided in 3.3.6 a) shall be along the property lines of the street fronts and from front door to front door, and in direct lines across intersections.
 - 2) The measurement of the distance between the place of business where alcoholic beverages are sold and a public or private school shall be:
 - a. in a direct line from the property line of the public or private school to the property line of the place of business, and in a direct line across intersections; or
 - b. if the permit or license holder is located on or above the fifth story of a multistory building, in a direct line from the property line of the public or private school to the property line of the place of business, in a direct line across intersections, and vertically up the building at the property line to the base of the floor on which the permit or license holder is located.

d) Measurement Exhibits.

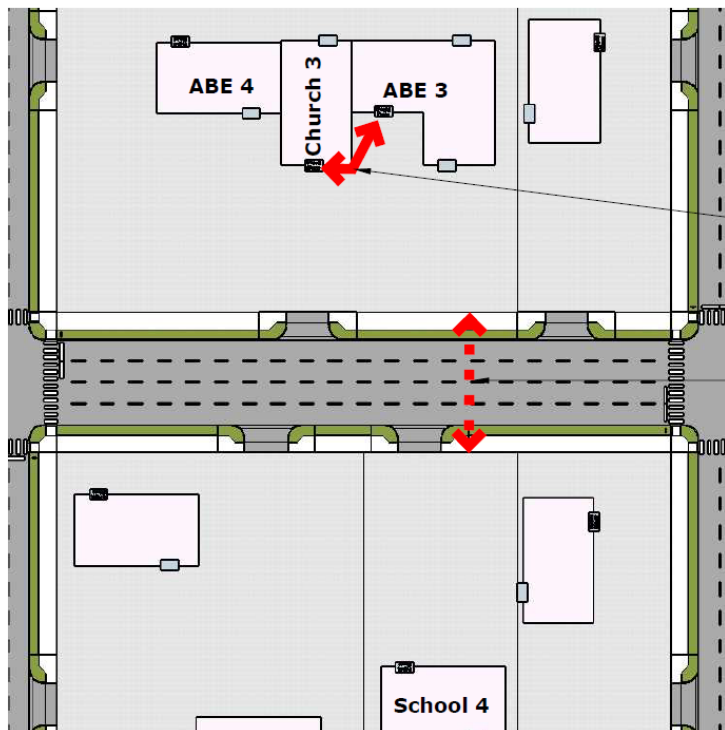
Exhibits 1 and 2



Case 1: Alcohol Beverage Establishment and Religious Institution from Front Door to Front Door, exiting Lot by shortest route, following legal path and entering adjacent lot and heading towards front door by shortest route.

Case 2: Alcohol Beverage Establishment and Religious Institution from Front Door to Front Door, exiting Lot by shortest route, following legal pedestrian path to cross the street and bypass unrelated properties, and entering adjacent lot and heading towards front door by shortest route.

Exhibits 3 and 4



Case 3: Alcohol Beverage Establishment and Religious Institution on Same Lot Measure from Door to Door by Shortest Legal Route.

Case 4: Alcohol Beverage Establishment and School Measure from Lot line to Lot line by Shortest Physical Distance.

- e) **Variances.** The city council may grant a variance to 3.3.8(a) if they determine that enforcement of the regulation in a particular instance is not in the best interest of the public, constitutes waste or inefficient use of land or other resources, creates an undue hardship on an applicant for a license or permit, does not serve its intended purpose, is not effective or necessary, or for any other reason the Council, after consideration of the health, safety, and welfare of the public and the equities of the situation, determines is in the best interest of the community.

- 1) Applications for an alcohol distance variance request shall be heard as a public hearing before the City Council.
- 2) Notice of the variance request shall be mailed to all property owners within five hundred (500) feet of the property from which the alcohol distance variance is being requested, according to the latest approved city tax roll.

3.3.7 Reporting Gross Sales.

- a) ***Annual Report.*** The person operating a restaurant selling alcohol for on premises consumption with a zoning designation of S-P-1 (R-AB) shall, on an annual basis and no later than on the thirtieth (30th) day of January, file with the city secretary an affidavit on an officially approved form provided by the city secretary that reflects gross sales for the preceding twelve-month period, or since the restaurant began its operation, whichever is shorter, breaking down the sales between the sale of food and the sale of alcoholic beverages.

- 1) For purposes of breaking down the sales between food and alcoholic beverages, sales taxes, alcoholic beverage taxes and any other applicable taxes or fees shall not be included in the calculations.
- 2) The city reserves the right to request persons operating a restaurant with a zoning district designation of S-P-1 (R-AB) to submit an annual audit of the gross sales broken down between food sales and mixed beverages sales at the person's expense. All filings including all sales and beverage tax filings shall remain confidential.

- b) ***Copies of TABC Reports.*** The person operating a restaurant with a zoning designation of S-P-1 (R-AB) shall on an annual basis file with the city secretary a copy of the filings supplied to the State of Texas (TABC) for sales tax and mixed beverage (alcoholic beverages) tax purposes.

- c) ***Audit.*** The city shall retain the right to request an audit of applicable records to determine if a business is violating this chapter or any provision of the Unified Development Code. The person operating a restaurant with a zoning designation of S-P-1 (R-AB) shall permit the city treasurer to view the books, records, and receipts relative to sale of food or nonfood revenue and alcoholic beverages at any time after four (4) hours' notice. The city attorney, city manager, city council, city treasurer, mayor or city secretary may examine said records. Said records may be introduced in court for the purpose of showing the person operating a restaurant with a zoning designation of S-P-1 (R-AB) is in violation of this ordinance.

d) ***Public Entertainment Facility*** (PEF).

1) Premises which include restaurants with attendant accessory uses of the sale of alcoholic beverages for on-premises consumption shall be a PEF if it meets all of the following:

- a. Located in the Urban Business Overlay District;
- b. Comprises a single, undivided tract of at least fifteen (15) acres;
- c. Contains a public entertainment facility ("PEF"), as defined by Section 108.73, Texas Alcoholic Beverage Code; and
- d. Zoned S-P-1 (R-AB)

2) On a PEF premises, the combined gross sales in Irving from alcoholic beverages for the entire PEF premises on an annual basis may be seventy (70) percent or less of the combined total sales of food and alcoholic beverages for the entire PEF premises. For the purposes of subsection [3.3.7](#), an owner or operator of a PEF premises shall report a combined total of all food and alcoholic beverage sales for all of the establishments contained within the PEF premises and a breakdown for each establishment within the PEF premises, whether or not there are more than one mixed beverage or private club permit holders.

3) The owner or operator of a proposed PEF premises applying for S-P-1 (R-AB) zoning to allow restaurants with attendant accessory uses of alcoholic beverages for on-premises consumption shall comply with all the requirements of subsection [3.3.3](#), and shall comply with all applicable requirements of [section 2.7.3](#).

3.3.8 ***City-Owned Properties and Facilities Funded by Hotel Occupancy Tax.*** The on-premise storage, possession, sale, serving, and consumption of any alcoholic beverage is authorized and a permitted use as an accessory use in any city-owned facility and/or whose construction or operation is funded in whole or in part by Hotel Occupancy Tax revenue. The on-premise storage, possession, sale, serving, and consumption of any alcoholic beverage in any city-owned facility whose construction or operation is funded in whole or in part by hotel occupancy tax revenue, is an exception to the provisions of section 3.3.3.

SECTION 2. That Section 1.12.5 "Administrative Amendments", of the City of Irving Unified Development Code is amended to add Subsections (d)(6) and (e)(5) as follows:

1.12.5 Administrative Amendments

d) Minor Changes to Site Plans in SP, S-P-1 and S-P-2 Site Plan Districts except those based on mixed use or TOD Transit Oriented District districts. Minor amendments may be accepted to an approved site plan which comply to those general parameters listed in section c) above in addition to the below provisions that:

- 6) For S-P-1 R-AB site plan zoning districts, allow flexibility in the usage of the premises. Items that may be revised without the completion of the rezoning process include:

- i. Changes of the interior design plan, provided the adjustments of areas for uses remains proportional to the approved site plan
 - ii. Changes in the elevation or exterior features
 - iii. Changes in the menu, restaurant and operator with a valid Certificate of Occupancy. The administrative amendment process cannot add or revise allowed uses.
- e) Minor Changes to S-P-1 and S-P-2 Site Plan Districts based on mixed use districts and TOD Transit Oriented District General Plans or Detail Plans. Minor amendments may be accepted to an approved site plan in the Heritage Crossing District (HCD), TOD and any future mixed-use and/or form-based districts which comply to those general parameters listed in section c) above in addition to the below provisions that:
 - 5) For S-P-1 R-AB site plan zoning districts, allow flexibility in the usage of the premises. Items that may be revised without the completion of the rezoning process include:
 - i. Changes of the interior design plan, provided the adjustments of areas for uses remains proportional to the approved site plan
 - ii. Changes in the elevation or exterior features
 - iii. Changes in the menu, restaurant and operator with a valid Certificate of Occupancy. The administrative amendment process cannot add or revise allowed uses.

SECTION 3: That Section 2.5.6 “Neighborhood Commercial (C-N)” of the City of Irving Unified Development Code is amended to revise subsection (a)(2) to read as follows:

2.5.6 Neighborhood Commercial (C-N)

- a) Principal uses. The following uses shall be permitted as principal uses:
 - 2. Café, restaurant, or cafeteria. Outdoor dining shall be permitted. Except outdoor dining shall not be permitted closer than 250 feet and no amplified music shall be operated within 500 feet of a single family zoned lot, both as measured at the closest edge of the patio space of the outdoor dining service to the residential property line. This limitation does not apply when the patio is fully screened from the residential property by a permanent building or to residential zoned properties used for nonresidential purposes.

SECTION 4. That Section 9.3 “Definitions” of the City of Irving Unified Development Code is amended to amend existing definitions and add new definitions as follows. All definitions shall be renumbered to retain their alphabetical order.

Eating establishment shall include, but not be limited to, a restaurant, cafeteria, convention center, hotel, entertainment center or a Public Entertainment Facility as defined in Section 108.73, Texas Alcoholic Beverage Code, wherein alcoholic beverages are sold on the permitted premises.

Hotel. For purposes of [Section 3.3](#), *hotel* means the premises of an establishment:

- 1) Where in consideration of payment, travelers are furnished food and lodging; and

- 2) In which are located at least ten (10) adequately furnished, completely separate rooms with adequate facilities so comfortably disposed that persons usually apply for and receive overnight accommodations in the establishment, either in the course of usual and regular travel or as a residence.

Private Club shall mean an establishment as qualified by Chapter 32 of the Texas Alcoholic Beverage Code for the operation of a social organization to which membership is by invitation only, and its meeting place in which only members and their guests are permitted.

Private school means a private school, including a parochial school, that:

- 1) Offers a course of instruction for students in one (1) or more grades from kindergarten through grade 12; and
- 2) Has more than one hundred (100) students enrolled and attending courses at a single location.

Restaurant shall mean a place of business open to the public for the provision of food and beverages to customers for compensation. A restaurant shall: provide food sales and service as the source of revenue; delineate areas for permanent seating and serving of patrons; and include a full kitchen or otherwise install appropriate kitchen facilities for preparation and preparation of a permanent menu which provides an assortment of foods for sale and consumption. Restaurants intending to provide alcoholic beverages service for consumption on the premises shall operate only as a Restaurant with attendant accessory use of the sale of alcoholic beverages for on-premises consumption (RAB) per section 3.3.5, including manufacture of such beverages on the premises, and shall hold an appropriate permit issued by the Texas Alcoholic Beverage Commission in accordance with the Texas Alcoholic Beverage Code, as amended, for the operation. Dancing and entertainment uses may be operated as accessory uses provided the activities do not displace the locations for primary food service activities.

SECTION 5. That this ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Irving, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

SECTION 6. Should any paragraph, sentence, clause, phrase, or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole or any part or provision thereof, other than the part so declared to be invalid, illegal, or unconstitutional, and shall not affect the validity of the comprehensive zoning ordinance as a whole.

SECTION 7. That nothing in this ordinance shall be constructed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or prior ordinance; nor shall any legal right or remedy of any character be lost, impaired, or affected by this ordinance.

SECTION 8. That any person violating or failing to comply with any provisions of this ordinance shall be fined, upon conviction, not less than one dollar (\$1.00) nor more than two thousand dollars (\$2,000.00), and each day any violation or noncompliance continues shall constitute a separate offense.

SECTION 9. That this ordinance shall take effect up adoption and shall be published in accordance with the provisions of the Texas Local Government Code and the Irving City Charter.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF IRVING, TEXAS,
on February 9, 2023.

RICHARD H. STOPFER
MAYOR

ATTEST:

Shanae Jennings
City Secretary/Chief Compliance Officer

APPROVED AS TO FORM:

Kuruvilla Oommen
City Attorney