

CITY OF ALVARADO ORDINANCE NO. 2015-010

AN ORDINANCE ADDING SECTION 34-176 TO ARTICLE VI OF CHAPTER 34 TO ESTABLISH CRITERIA AND REGULATIONS FOR THE LOCATION, SPACING, RELOCATION AND REMOVAL OF DRIVEWAYS; PROVIDING A REQUIREMENT FOR CROSS-ACCESS EASEMENTS AND DRIVEWAYS IN SELECTED SITUATIONS; PROVIDING FOR PERMIT REQUIREMENTS; PROVIDING A REVIEW PROCESS; PROVIDING ENFORCEMENT PROCEDURES; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Alvarado, Texas is a Type A General Law City created in accordance with the provisions of Chapter 6 of the Local Government Code and operating pursuant to the enabling legislation of the State of Texas; and

WHEREAS, driveway access and design regulation can reduce the number of vehicular accidents by reducing the number of conflicting turning movements; and

WHEREAS, driveway access and design regulation can reduce congestion and increase roadway capacity by reducing the number of driveways and approaches; and

WHEREAS, driveway access and design regulation can make roadways safer by locating driveways further from hazardous intersections;

WHEREAS, safe and efficient driveway access and design can improve public welfare and increase tax revenue by improving the appearance of the City and attracting new business, industry, and residents, and

WHEREAS, the City Council of the City has determined that driveway access and design regulation is necessary to adequately protect the public health, safety, and welfare;

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

SECTION 1.

ADDITION OF SECTION 34-176 TO CREATE REGULATIONS REGULATING DRIVEWAY SPACING AND REQUIRING COMMON-ACCESS EASEMENTS

Section 34-176 of Article VI of Chapter 34 of the Alvarado City Code is hereby added, which section shall provide as follows:

Section 34-176. Driveway Spacing and Common Access Easements.

(a) **Purpose and Intent.** The purpose of this ordinance is to promote the following public purposes:

1. Providing for safe and efficient vehicular access to or from Commercial, Industrial and Multi-Family Property and public or private streets while maintaining vehicular access to and from the street system to all Properties;
2. Reduction of unnecessary traffic congestion and vehicular accidents caused by the number of conflicting turning movements;
3. Preservation of the capacity of public streets during peak traffic volumes by minimizing disruption of smooth traffic flow caused by frequent vehicular turning maneuvers and resulting slowing of traffic;
4. Promotion of orderly, efficient and attractive development of Commercial, Industrial and Multi-Family Properties and visibility of commercial businesses, thereby resulting in the promotion of business, tax revenue, and quality of life of residents.

It is the intent to achieve these purposes by providing for the optimal spacing of Driveways, by prohibiting the indiscriminate location and spacing of Driveway Access within close proximity to other existing or planned Driveway Access and street intersections, and requiring the creation of cross-access easements to minimize the number and insure safe location of Driveway Accesses.

(b) **Definitions.** For the purpose of this Section, the following words and terms shall have the meanings provided in this subsection. If not defined in this subsection, words and terms shall have the meanings ascribed thereto in the Subdivision Ordinance, Zoning Ordinance, Thoroughfare Plan, or other ordinances of the City. Words and terms defined in multiple ordinances shall be read in harmony unless there exists an irreconcilable conflict in which case the definition contained in this subsection shall control.

1. ***Applicant*** means any owner, authorized agent, lessee, contractor or developer who desires to construct, reconstruct, relocate or in any way alter the design of a Driveway.
2. ***Arterial*** means any existing or future roadway classified as an arterial in the Thoroughfare Plan.

3. **Collector** means any existing or future roadway classified as a collector in the Thoroughfare Plan.
4. **Common Access Easement** means an easement allowing public and private vehicular and pedestrian access onto, across, through and from a Property to an adjacent Property and/or to an adjacent public or private street for the joint use of each affected Property, in order to facilitate the public purposes of this Section and comply with the requirements of this Section. Common Access Easements shall be created by dedication on the final plat of the subject Properties, or by separate instrument recorded with the County Clerk with a copy filed with the City.
5. **Director** means the Director of Public Works or that person's designee.
6. **Driveway** means pavement or improved surface on a Property designed and intended for vehicular traffic onto, across, through and from a Property, including but not limited to the Driveway Approach. The Driveway is the area located both within public right-of-way and extending onto a Property when necessary to ensure safe entry and exit from the Driveway onto and from the street and/or to provide vehicular access to and from another Property.
7. **Driveway Approach** means that portion of the Driveway that provides planned vehicular access connection between a Property and a public or private street. The Driveway Approach is primarily located within public right-of-way but may be considered to extend onto a Property when necessary to ensure safe entry and exit from the Property onto and from the street.
8. **Driveway, Commercial** means a Driveway providing vehicular access onto, across, through and from Commercial Property, excluding Service Driveways. The principle use of Commercial Driveways will be automobile traffic with only incidental use by truck traffic.
9. **Driveway, Common** means a Driveway constructed to provide access onto, across, through and from two (2) or more Properties.
10. **Driveway, Industrial** means a Driveway providing vehicular access onto, across, through and from Industrial Property, excluding Service Driveways. The principle use of Commercial Driveways will be automobile traffic to and from administrative or employee parking lots, with only incidental use by truck traffic.

11. ***Driveway, Multi-family*** means a Driveway which provides access to Multi-Family Property.
10. ***Driveway, Residential*** means a Driveway which provides access to Residential Property.
11. ***Driveway, Service*** means a Driveway whose principle use is to provide ingress and egress for truck movements to and from loading docks located on Commercial or Industrial Property. For the purposes of this ordinance, a truck is any vehicle or combination of vehicles (e.g. tractor-trailer) with a gross vehicle weight of 26,001 pounds or greater.
12. ***Driveway, Temporary*** means a Driveway permitted by the City in accordance with this Section for a limited specified time or until an adjacent Property develops or until a Common Access Easement can be created on an adjacent Property, at which time the Temporary Driveway is to be removed and the street restored.
13. ***Frontage road*** means driving lanes within State of Texas right-of-way that parallel the principal highway or freeway driving lanes and which provide direct access to Properties adjacent to such right-of-way.
14. ***Local street*** means any future or existing roadway designed to provide direct access to Residential Property and providing internal traffic circulation within residential neighborhoods.
15. ***Property*** means a single tract or individually-platted lot of real property.
16. ***Property, Commercial*** means Property which is either zoned or used, wholly or partially for offices, the wholesale or retail sale of goods and services, or for community services such as parks, schools, places of worship and governmental facilities.
17. ***Property, Industrial*** means Property which is either zoned or used, wholly or partially for industrial purposes, and Property other than Commercial Property, Multi-Family Property or Residential Property, as defined in this ordinance.

18. ***Property, Multi-family*** means Property which is either zoned or used for private residential use, and containing four (4) or more attached dwelling units.
19. ***Property, Residential*** means Property which is either zoned or used for a single-family residence, a duplex or a multi-family building containing three or fewer dwelling units.

(c) Permit Required.

1. No person shall construct, reconstruct, relocate or in any way alter the design or operation of any Commercial, Industrial, Multi-Family or Service Driveway without a Driveway Approach permit issued by the City. In no event shall a Driveway be allowed or permitted if it is determined by the Director to be detrimental to the public health, safety and welfare. No permits for other building construction or site work, including grading and paving, shall be issued for Commercial, Industrial, Multi-Family, or Service Driveways until a site plan meeting the requirements of this ordinance has been approved by the Director and an appropriate permit issued.
2. Driveway permits shall be issued only in compliance with this Section and the other ordinances of the City, and may include terms and conditions authorized by this ordinance.

(d) Common Access Easements.

1. Any Commercial, Industrial or Multi-Family Property with sufficient frontage to safely meet the design requirements of subsection (f) may be permitted their own driveway(s). Common access easements may be required between adjacent Properties if any such Property does not meet the design requirements of subsection (f).
2. If an Applicant is required to use one or more Common Driveways, the Applicant shall be responsible for obtaining Common Access Easements on and over adjacent Properties as necessary. The City may, but shall not be required to, assist in the acquisition of off-site Common Access Easements if the Applicant is unable to acquire them. With a request for assistance, the Applicant shall provide the City with documentation of the Applicant's efforts, including evidence of a reasonable offer made to the owner of the adjacent Property. Upon such a written request for assistance, the City may attempt to acquire the needed Common Access Easement through negotiations.

3. If the negotiations are unsuccessful, the Applicant may submit a request to the City Council for consideration of acquisition of the required Common Access Easement through condemnation, or, if the adjacent Property has not yet developed, the Applicant may apply for consideration of a Temporary Driveway as provided in this subsection.
4. If the applicant chooses to pursue an off-site Common Access Easement, including through condemnation by the City, the total cost of the acquisition and the cost of the Common Access Easement shall be paid by the Applicant.
5. If the Applicant chooses to pursue a Temporary Driveway, the Applicant shall submit an application explaining the efforts made to obtain the required Common Access Easement and any reasonable alternatives, and a detailed site plan and specifications for the proposed Temporary Driveway. The Applicant shall be responsible for the cost of installation, maintenance and removal of the Temporary Driveway, and shall provide financial security to remove the Temporary Driveway and replace or repair the street as needed upon development of the adjacent Property and the creation of the required Common Access Easement. Approval of a Temporary Driveway and the terms of such approval shall be determined by the Director applying the goals and purposes of this Section.
6. If a required Common Access Easement cannot be acquired using the methods described herein, and if the City elects not to acquire the Common Access Easement through condemnation, the Applicant shall present alternate Driveway locations and designs in conformance with this Section and other ordinances of the City.
7. The use of a common or shared Driveway Approach shall be permitted provided that such use purpose is expressly allowed and reflected by dedication of a joint-use private access easement on the final plat of each affected property, or be by separate instrument recorded with the County with a copy forwarded to the City.
8. A Common Access Easement shall encompass the entire width of the planned Driveway plus an additional width of one foot (1') on both sides of the Driveway. At a minimum, the Common Access Easement must be twenty-six (26') feet wide and must be located no closer than ten (10') to the right-of-way, and must extend to the street at all allowed Driveway Approach locations.

(e) **Application to existing driveways.** Upon application for building permit or certificate of occupancy, existing Driveways that are not in conformance with this Section shall be brought into compliance at the expense of the Applicant as a condition of the building permit or certificate of occupancy if one of the following conditions exists:

1. The Director determines that existing use of the Driveway is projected to increase in actual or proposed daily design hour volume by twenty percent (20%) or more.
2. The Director determines that the change in the use of the Property or modifications to the Property impacts the flow of vehicles entering or exiting the Property in a manner which is anticipated to disrupt normal traffic flow in the public street, thereby creating a hazard. Changes in the Property which could require conformance to this Section may include, but is not necessarily limited to, change in type of business, expansion in an existing business, subdivision which creates new parcels, or physical modifications to the site other than advertising, landscaping, general maintenance, aesthetics, or other changes that do not affect internal or external traffic flow or safety.
3. The buildings on the Property are projected to increase in size by twenty percent (20%) or more.

(f) **Design Criteria and Standards.** The following design criteria and standards shall be followed in the design and construction of Driveways within the City of Alvarado. Distances between Driveways and streets shall be measured from the centerline of the driveway and from the closest point of the right-of-way at the street intersection. Distances between Driveways and other Driveways shall be measured centerline to centerline.

1. Driveways on Interstate 35 frontage roads, Interstate 35 Business, and U. S. Highway 67, and any other state or federal highways shall be designed in accordance with applicable federal and Texas Department of Transportation (TxDOT) access control guidelines.
2. Regardless of the type of street, full access Driveways shall not be located closer than 250 feet of an intersection of Interstate 35 right-of-way, Interstate 35 Business right-of-way, or U.S. Highway 67 right-of-way. Driveways to be constructed within 250 feet of an intersection of Interstate 35 right-of-way, Interstate 35 Business right-of-way, or U.S. Highway 67 right-of-way shall be

right-in/right-out only, but in no event shall such Driveway be located closer than 150 feet from such intersection.

3. Commercial, Industrial, Service and Multi-Family Driveways on Arterials shall not be constructed closer than 250 feet from any street intersection and not closer than 250 feet from any other existing Commercial, Industrial, Multi-Family or Service Driveway.
4. Commercial, Industrial, Multi-Family and Service Driveways shall not be permitted on Collector or Local Streets unless the tract or lot has no other street access. In the event there is no other street access, Commercial, Industrial, Multi-Family and Service Driveways shall be permitted on Collector or Local Streets, but Commercial, Industrial, Multi-Family and Service Driveways on Collector streets shall not be constructed closer than 150 feet from any street intersection and not closer than 150 feet from any other existing Commercial, Industrial, Multi-Family or Service Driveway, and Commercial, Industrial, Multi-Family and Service Driveways on Local Streets shall not be constructed closer than 150 feet from any street intersection and not closer than 100 feet from any other existing Commercial, Industrial, Multi-Family or Service Driveway.

(g) Modifications, Variances and Appeals.

1. Modifications may be granted by the Director from the design criteria and standards set forth in this Section under unique circumstances whenever needed to recognize unique extenuating circumstances or preserve the health, safety and welfare of the public, provided the modifications provide the same degree of protection, and provided that the modifications are in conformity with the intent and purpose of this ordinance. The Director may defer any request by an Applicant to the City Council for final determination. In considering a request for modification, the Director may require a traffic impact analysis be prepared and signed by a Registered Professional Engineer in the State of Texas that certifies the existing traffic conditions and determines the projected traffic to be generated by a proposed development to assist the Director in the Director's analysis.
2. Any Applicant who desires a variance or elimination of the requirements herein, or who desires to appeal a decision of the Director regarding modifications to this Section shall file a written appeal to the Director who shall place the request on the agenda for consideration by the City Council. The City Council shall have the

authority to grant a variance from the requirements of this Section. In granting any variance, the criteria to be applied by the City Council is whether all of the following apply: (I) a literal enforcement of the regulations herein will create an unnecessary and unreasonable hardship on the Applicant; (ii) the situation causing unnecessary hardship or practical difficulty is unique to the affected Property; (iii) the situation causing unnecessary hardship or practical difficulty is not self-imposed by the Applicant's own actions and decisions; (iv) the variance will not injure and will be wholly compatible with the use and permitted development of adjacent Properties; and (v) the granting of the variance will be in harmony with the spirit and purpose of this Section. The decision of the City Council shall be final.

- (h) **Enforcement and Violations.** Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined not to exceed Five Hundred Dollars and No Cents (\$500.00) for each incident. Each day that a violation exists shall constitute a separate offense.

SECTION 2. PROVISIONS CUMULATIVE

This ordinance shall be cumulative of all provisions of ordinances of the City of Alvarado, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

SECTION 3. RESERVATION OF RIGHTS AND REMEDIES FOR ACCRUED VIOLATIONS

All rights or remedies of the City are expressly saved as to any and all violations of Chapter 34, as amended, or any other ordinance of the City that have accrued at the time of the effective date of this Ordinance and as to such accrued violations and all pending litigation, both civil and criminal, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the Courts.

SECTION 4. PROVISIONS SEVERABLE

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since

the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

**SECTION 5.
PUBLICATION IN PAMPHLET FORM**

The City Secretary of the City of Alvarado is hereby authorized to publish this ordinance in book or pamphlet form for general distribution among the public, and the operative provisions of this ordinance as so published shall be admissible evidence in all courts without further proof that the production thereof.

**SECTION 6.
PUBLICATION IN OFFICIAL NEWSPAPER**

The City Secretary of the City of Alvarado is hereby directed to publish the caption, penalty clause, publication clause and effective date clause of this ordinance one time in the official newspaper of the City, as authorized by Section 52.011 of the Local Government Code.

**SECTION 7.
EFFECTIVE DATE**

This ordinance shall be in full force and effect from and after its passage and publication as required by law.

Passed and approved this the 20th day April, 2015, by a vote of 4 to 0.

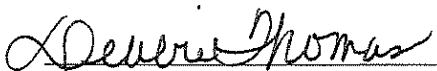
THE CITY OF ALVARADO

By:



The Honorable E. Dewayne Richters, Mayor

Attest:



Debbie Thomas, City Secretary

Approved as to form and legality:

Tim G. Sralla, City Attorney

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