

PUBLIC HEARING/ Ordinance Text Amendment Chapter 106

Background

- In 1972 the Town of Little Elm first adopted a Zoning Ordinance
 - Replaced or amended several times since, either comprehensively or in part
- 2019 was most recent comprehensive Zoning Ordinance amendment
- Since 2019
 - several small amendments
 - adding certain zoning definitions
 - amending district height requirements
 - clarifying the intent and installation of public art in the Lakefront District
- However, since 2019, there has not been a chapter wide update of the Zoning Ordinance.

Proposal

- As a result of the 2023 legislative sessions, the legal counsel for the Town has proposed several text amendments to keep the Town compliant with new State Statutes.
- Over the recent years, Staff have also been keeping track of minor errors and potential changes necessary to clarify or resolve conflicting items through the code, as well as changing land use practices.
 - Considering the state's required changes to the Zoning Ordinance, Staff believe this is an appropriate time to make the necessary minor revisions.
 - Changes other than those recommended by legal counsel are largely clerical in nature seeking to clarify, standardize, or keep up with land use practices today.

Legal Counsel Proposed Changes

- 106.02.02 “Board of Adjustment”
 - These changes reflect new legislation related to the compensation and amortization options for property owners and lessees for damages associated with termination of a nonconforming use.
- This new change adds ‘lessee’ to those who could receive amortization.
- Also changes and/or clarifies how an amount is calculated. Moving, lease/mortgage discharge

Sec. 106.02.02 Board of adjustment.

(a) Authority, duties and responsibilities.

- (1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the development services director in the enforcement of this chapter, including any appeal from a vested rights determination by the town manager pursuant to the town's vested rights policy, originally adopted by Resolution No. 11210602, and as amended by Resolution No. 03050801, and detailed in section 106.02.07, "vested rights," and any other applicable amendments.
- (2) To hear and decide only such special exceptions as the board of adjustment is specifically authorized to pass on by the terms of this chapter; to decide such questions as are granted; and to grant special exceptions with such conditions and safeguards as are appropriate under this chapter, or to deny special exceptions when not in harmony with the purpose and intent of this chapter.
- (3) To hear and decide upon only such variances or modifications of the height, yard, area, coverage and parking regulations as the board is specifically authorized to pass on pursuant to the terms of this chapter.
- (4) To hear and decide upon the existence of any nonconforming use and to enforce the amortization provisions as set forth in this chapter and authorized by Texas Local Government Code Section 211.019.

(h) Nonconforming uses.

- (1) The board, on its own motion or at the direction of the town council or an interested property owner, may inquire into the existence of any nonconforming use in the Town of Little Elm, and after public hearing and investigation into the conditions created by the use, fire or health hazards created by the use, and any other danger or nuisance to the public due to or created by any condition or use existing on the property, require the discontinuance or termination of such use. The owner of the use under investigation by the board shall have not less than ten days written notice prior to the day of the public hearing. The board, after having heard from any affected parties and the public, shall prescribe a reasonable time period for compliance, discontinuance and termination of the nonconforming use. The board shall, in accordance with Section 211.019 of the Texas Local Government Code, utilize the procedures and owner or lessee compensation criteria contained in said Section in the event the Town determines that a nonconforming use of property shall; that allows for amortization of the owner's actual investment in the use that occurred before the time that the use became nonconforming.
 - a. In prescribing said time period, the board shall consider the following factors:
 1. The 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 at the time the use became nonconforming;
 2. Any costs that are directly attributable to the establishment of compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages;
 3. Any return on investment since inception of the use, including net income and depreciation; ~~and~~
 4. The anticipated annual recovery of investment, including net income and depreciation; ~~and.~~
 5. In accordance with Section 211.019 of the Texas Local Government Code, utilize the procedures and owner or lessee compensation criteria contained in said Section in the event the Town determines that a nonconforming use of property shall cease.
 - b. If the board establishes an amortization (or compliance) date for a nonconforming use, the use must cease operation on that date and it may not operate thereafter unless it becomes a conforming use. The board shall, pursuant to the requirements of Section 211.019 of the Texas Local Government Code, determine the payment that is due to the owner or the lessee of the property for damages associated with terminating the nonconforming use.
 - c. For purposes of this section, "owner" means the owner of the nonconforming use at the time of the board's determination of an amortization (or compliance) date for the nonconforming use, and "lessee" means an individual or entity that has a valid lease for the nonconforming use at the time of the board's determination of an amortization (or compliance) date for the nonconforming use.
 - d. The board shall have the power to subpoena witnesses, documents and things; administer oaths; punish for contempt; and may require the production of documents and other things, under such regulations as it may establish or deem appropriate.

Legal Counsel Proposed Changes

- 106. 02.11 “Map amendments to the zoning ordinance”
 - These changes include language specifically provided by new State Statute related to notices sent out when a zoning change would turn a conforming use into a nonconforming use.
- This only affects properties that are conforming at the time of the zoning.

Legal Counsel Proposed Changes

- (3) *Notification prior to the planning and zoning commission public hearing.* The commission must hold a public hearing on any application for a zoning map amendment or change prior to making its recommendations and report to the town council. The following state mandated regulations must be met before the public hearing may be convened:
- a. Written notice of all public hearings before the commission on a proposed amendment or change to the official zoning map, including an amendment or change to the use and development regulations governing a specific tract of land, must be sent to all owners of real property located within 200 feet of the property on which the change is requested. Notice must be given a minimum of ten days prior to the date set for the public hearing by mailing such notice properly addressed and postage-paid to each taxpayer as the ownership appears on the last approved town tax roll. A certificate of mailing shall be obtained from the postal service and copy of same shall be retained in the case records.
 - b. In addition to the foregoing notice, the Town shall provide written notice of each public hearing regarding any proposed adoption of or change to a zoning regulation or boundary under which a current conforming use of a property is a nonconforming use if the regulation or boundary is adopted or changed. The notice shall:
 - (i) be mailed by United States mail to each owner of real or business personal property where the proposed nonconforming use is located as indicated by the most recently approved municipal tax roll and each occupant of the property not later than the 10th day before the hearing date;
 - (ii) contain the time and place of the hearing; and
 - (iii) include the following text in bold 14-point type or larger: "THE TOWN OF LITTLE ELM IS HOLDING A HEARING THAT WILL DETERMINE WHETHER YOU MAY LOSE THE RIGHT TO CONTINUE USING YOUR PROPERTY FOR ITS CURRENT USE. PLEASE READ THIS NOTICE CAREFULLY."
 - c. Notice of such hearing by the planning and zoning commission must be given by publication in the official newspaper of the Town of Little Elm stating the time and place of such public hearing a minimum of ten days prior to the hearing.
 - d. Public notification signs must be posted, per subsection (e), below, a minimum of ten days prior to the hearing and remain in place until the public hearing by the commission and must remain in place until the hearing before the town council.
 - e. Notice of the public hearing must be posted at town hall a minimum of 72 hours prior to the commission hearing.

Legal Counsel Proposed Changes

- 106.05.05 “Nonconforming uses and structures”
 - Changes the minimum timeframe for abandonment from 30 days to six months. Also adds notification and remedy requirements.
- This will essentially be business as usual. But extends the time frame until such rights be terminated.

Legal Counsel Proposed Changes

106.05.05 “Nonconforming uses and structures”



- (c) *Nonconforming uses of land.* Where, at the effective date of adoption or amendment of this chapter, lawful use of land exists that is made no longer permissible under the terms of this chapter as enacted or amended, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:
- (1) No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this chapter;
 - (2) No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this chapter;
 - (3) If any such nonconforming use of land ~~is intentionally abandoned for at least six months ceases for any reason for a period of more than 30 days~~, all nonconforming rights are terminated and any subsequent use of such land shall conform to the regulations specified by this chapter for the district in which such land is located.

(k) Termination of Nonconforming Uses and Compensation for such Termination.

- (1) A person using a property in a manner considered to be a nonconforming use as a result of the adoption of or change to a zoning regulation or boundary may continue to use the property in the same manner unless required by the Town to stop the nonconforming use of the property.
- (2) If the Town requires a property owner or lessee to stop the nonconforming use of a property as described by Subsection (k)(1), the owner or lessee of the property is entitled to compensation as set forth in Texas Local Government Code Section 211.019(d).
- (3) Not later than the 10th day after the date the Town imposes a requirement to stop a nonconforming use of a property under this section, the Town shall give written notice to each owner or lessee of the property, as indicated by the most recently approved municipal tax roll, who is required to stop a nonconforming use of the property of the requirement and of the remedies which an owner or lessee of the property is entitled to under Texas Local Government Code Section 211.019(d).
- (4) A person entitled to a remedy under Texas Local Government Code Section 211.019 may appeal a compensation determination to the board of adjustment not later than the 20th day after the date the determination is made. _____

Staff Proposed Changes

- 106.01.14 “Land use definitions”
 - Staff added a definition for “Banquet Hall” and also added it to the Schedule of Uses. Staff has received numerous requests for banquet halls but due to not being specifically defined as a use or in the use chart staff have been interpreting the ordinance to be an accessory use.
 - Staff believes this use definition allows for clear understanding of what a Banquet Hall is, how it is used, and what a banquet hall isn’t.
 - This amendment gives the Town Staff and potential applicants a clearer understanding of what is allowed under this use, how to administer this use, and makes the process of allowing this use more efficient.

Banquet Hall. An establishment which is rented by individuals or groups to accommodate private functions including, but not limited to, banquets, weddings, anniversaries, and other similar celebrations. Such use, may or may not include: 1) kitchen facilities for the preparation or catering of food; 2) the sale of alcoholic beverages for on-premise consumption, only during the scheduled events, and not open to the general public; 3) outdoor gardens or reception facilities.

(Proposing to only be allowed through SUP)

Staff Proposed Changes

- 106.01.14 “Land use definitions”
 - Staff also proposed amendments to the definitions for “Manufacturing and industrial, heavy” and “Manufacturing and industrial, light”. The changes made removed lines about worker’s skill, which staff felt were not relevant to the land use definition.

Manufacturing and industrial, heavy. A facility that involves assembly and fabrication activities and the use of machines, tools and labor to make items for use or sale and typically requires access to major thoroughfares, major highways, and/or other means of transportation such as the railroad for transfer of parts and final products. May also include warehousing, research and development, wholesaling operations with infrequent customer or client visits, and may include related office and shipping areas. Heavy industry involves one or more of the following characteristics such as large and heavy products; large and heavy equipment and facilities (such as heavy equipment, large machine tools, and spacious buildings); or complex and numerous processes. ~~The labor for heavy industry often must be highly skilled.~~ Examples of heavy industry include, but are not limited to, steel manufacturing, automotive assembly, machine tool design and construction, boat or aircraft manufacturing, and power plants.

Manufacturing and industrial, light. A facility that involves assembly and fabrication activities and the use of machines, tools and labor to make items for use or sale. May also include warehousing, research and development, wholesaling operations with infrequent customer or client visits, and may include related office and shipping areas. Light industry is often assembly-based and is typically consumer-oriented (i.e., most light industrial products are sold to retail stores or end users rather than as intermediate parts for use by other industries). Light industry generally has less environmental impact than those associated with heavy industry. ~~Light industry may employ lower skilled workers with only moderate training and often employ large numbers of people.~~ Light industries require a relatively small amount of raw materials, area and power. Examples of light industry include, but are not limited to, plastic items, clothing, shoes, foods, beverages, personal care and home care products, cosmetics, drugs, furniture, consumer electronics, and home appliances.

- 106.01.14 “Land use definitions”

Automobile definition revised per P&Z suggestion to ensure electric vehicles were included.

Automobile. A self-propelled mechanical or electrical vehicle designed for use on streets and highways for the conveyance of goods and people, including, but not limited to, passenger cars, trucks, buses, motor scooters, and motorcycles.

Staff Proposed Changes

Staff Proposed Changes

- Sections 106.03.02 “Zoning districts – Residential” and 106.06.17 “Multifamily landscape requirements”
 - These changes move the approving authority for Credit for Sloped Areas from the Planning and Zoning Commission and Town Council to the Director of Development Services.
- There is not likely to be a substantial waiver and if the development is requesting waivers, it would then go before the Planning and Zoning Commission and Town Council under a Planned Development request anyway, at which point, the open space slope can be reviewed and considered.
- This amendment also quantifies the max slope of open area, which is not to exceed two percent across the whole area.
 - Previously there was not an amount specified for the max slope, which is why no approval was ever sought out.

- Sections 106.03.02 “Zoning districts – Residential” and 106.06.17 “Multifamily landscape requirements”

Staff Proposed Changes

- (13) *Open space.* Each lot or parcel of land must comply with the following conditions in addition to the town's landscaping ordinance.
- e. At the time of site plan approval, the Director of Development Services ~~planning and zoning commission and/or town council~~ may give full or partial credit for open areas that exceed the maximum slope of 2 percent, if it is determined that such areas are environmentally significant and that their preservation would enhance the development.

Staff Proposed Changes

- Sections 106.04.01 “US 380 Overlay District” and 106.06.46 “Stacking Standards”
 - These changes changed the use of “car” to “automobile” for the continuity of using the same word across the entire chapter.
- Section 106.01.13 has a definition for “automobile” but does not have a definition for “car”, which is why staff changed all instances of “car” to “automobile”.
 - *Automobile.* A self-propelled mechanical vehicle designed for use on streets and highways for the conveyance of goods and people, including, but not limited to, passenger cars, trucks, buses, motor scooters, and motorcycles.

- Sections 106.04.01 “US 380 Overlay District” and 106.06.46 “Stacking Standards”

Sec. 106.04.01 US 380 Overlay District.

- (d) *Use regulations.*
- (2) *Prohibited uses.*
 - ff. Vehicle or automobile ~~car~~-wash, self-serve.

Staff Proposed Changes

Sec. 106.06.46 Stacking standards.

ARTICLE VI, TABLE M	
REQUIRED STACKING SPACES	
Type of Land Use	Minimum Number of Stacking Spaces
Banks, financial institutions	3 spaces per line
Car - <u>Automobile</u> wash, automated self-service	3 spaces per wash bay, including one at the bay exit for drying
Car - <u>Automobile</u> wash, full-service	3 spaces per car wash line
Car - <u>Automobile</u> -wash, wand-operated self-service	2 spaces per wash bay, including one at the bay exit for drying
Kiosks with drive-thru	2 spaces per line (or per director)
Restaurants with one order window	4 spaces per line
Restaurants with two or more order windows	2 spaces per second line and any subsequent line
Retail, pharmacy, dry cleaners	3 spaces per line

- Section 106.05.01 “Schedule of Uses”
 - Staff corrected Communications Tower to Specific Use Permit from Conditional Use Permit to match section 106.05.02 which states Communications Towers require a Specific Use Permit.
 - Staff also added the Banquet Hall Use to the chart, requiring an SUP in LF, LC, HC, LI, and HI districts. This is in response to staff receiving many requests for banquet hall type uses, but not having a clear path to the administrative approval of such a use.

Staff Proposed Changes

Infrastructure Type Uses									
Airport/landing field/heliport		C		C	C	C	C	C	C
Alternate energy system	C	C	C	C	S	C	C	C	C
Communication tower	CS	CS	CS	CS	S	CS	S	CS	CS
Service Uses									
Alternative financial services					S	C		C	C
Bank, savings and loan, or credit union		P			S	P	P	P	P
Banquet Hall					S	S	S	S	S

- Section 106.06.05 “Architectural Standards for Commercial Structures”
 - Staff corrected an error in the table for the minimum and maximum building materials for buildings over 15,000 square feet.
 - At the PZ hearing Staff incorrectly assumed the percentages were simply flipped.

Staff Proposed Changes

ARTICLE VI, TABLE C			
Required Percentages of Exterior Materials For Commercial			
	Facades	Percentage Breakdown	Definition
Buildings 15,000 square feet or less	Primary	Min. 80% Group A Max. 20% Group B	Exterior walls on public street or along an active storefront
	Secondary	Min. 20% Group A Max. 80% Group B	Exterior walls NOT clearly visible from a public street or along an active storefront
Buildings greater than 15,000 square feet	Primary	Min. 20 80% Group A Max. 80 20% Group B	Exterior walls on public street or along an active storefront
	Secondary	Min. 80 20% Group A Max. 20 80% Group B	Exterior walls NOT clearly visible from a public street or along an active storefront

- However, upon further research Staff confirmed the requirement was actually intended to be the same percentage for both primary and secondary facades, as follows:

ARTICLE VI, TABLE C			
Required Percentages of Exterior Materials For Commercial			
	Facades	Percentage Breakdown	Definition
Buildings 15,000 square feet or less	Primary	Min. 80% Group A Max. 20% Group B	Exterior walls on public street or along an active storefront
	Secondary	Min. 20% Group A Max. 80% Group B	Exterior walls NOT clearly visible from a public street or along an active storefront
Buildings greater than 15,000 square feet	Primary	Min. 20% Group A Max. 80% Group B	Exterior walls on public street or along an active storefront
	Secondary	Min. 20% Group A Max. 80% Group B	Exterior walls NOT clearly visible from a public street or along an active storefront

Staff Proposed Changes

- Section 106.06.15 “Plant List”
 - Staff added Latin plant species names in order to clarify recurring questions from Landscape Architects. Staff also removed several invasive species and corrected spelling mistakes.
 - Changes are:
 - Removed duplicate of Eastern Black Walnut since Black Walnut is the same tree.
 - Removed viburnum from Ornamental Tree Category, remained in evergreen shrub.
 - Removed Callery Pear and Flowering Pear due to potential invasiveness of species.
 - Removed Chaste Tree as it is a duplicate of Vitex.
 - Removed Barberry, Burning Bush, and Leatherleaf Mahonia due to their invasive patterns in the Southern US.

Staff Proposed Changes

Section 106.06.18 “Commercial Landscape Requirements”

- Staff removed the enhanced entranceway paving option and combined it with the enhanced hardscape option.
- Staff also removed the amenity detention pond and combined it under the retention pond option and reduced the points from 10 to 5 since rainwater storage is a requirement of site development.
- Lastly, staff also added points for outdoor lighting being “Darksky Approved” in accordance to the Town’s Comprehensive Plan environmental goals and objectives.

- Section 106.06.18 “Commercial Landscape Requirements”

Staff Proposed Changes

ARTICLE VI, TABLE H	
LANDSCAPE POINTS EARNED PER AMENITY	
Amenity Type/Size	Number of Points
Hardscaping, signage, or architectural features that include reference to Little Elm's lakefront character, such as use of sailboats or lighthouses in amenities	10
Enhanced entranceway paving (using pavers, cobble or different colored stamped concrete)	5
Enhanced hardscape (<u>Stamped entryway (per design guide)</u> stamped crosswalks , decorative cobble walkways, meandering sidewalks, etc.)	5
Enhanced landscaping (within development and at the entranceways of the development)	5
Enhanced site canopy (planting perimeter trees one per 30 feet AND locating a parking island every ten spaces)	5
Enhanced streetscape elements (e.g. decorative lampposts, receptacles, decorative bollards, etc.)	5
Use of street furniture (benches, tables and chairs)	5
Enhanced buffers: (providing a landscape buffer five feet more than what is required adjacent to street frontage and perimeter)	5
Open space provision greater than what is required (20 to 30 percent over minimum)	5
Buffer berms (providing 3-foot-high berms along the street frontage)	5
Use of shaded and decorative outdoor seating areas (benches, outdoor dining, etc.)	5
Use of masonry planters with irrigation (minimum 4)	5
Foundation plantings along 75 percent of the building's primary facade	5
Decorative entrance including a landscaped median entry which is a minimum eight feet in width and 60 feet long	5
Public art, small (obelisks, sculptures, statues, clock towers, water fountains, etc.)	5
Public art, large (obelisks, sculptures, statues, clock towers, water fountains, etc.)	10
Amenity detention pond (dry)	5
<u>Enhanced</u> Amenity detention /retention pond (wet with fountain feature)	5 5+0
<u>All outdoor lighting is “Darksky Approved” and meets Town’s Lighting requirements</u>	5
Other (a developer may propose a unlisted landscape element if it meets the spirit and intent of the ordinance, subject to review and approval by the director)	5

Staff Proposed Changes

- Section 106.03.32 “Residential Fences”
 - Staff have requested that the provision that residential fences cannot be put around a vacant lot in order to match the International Property Maintenance Code which was adopted by the Town

m. *Vacant Lots. Fences cannot be located on vacant or undeveloped lots.*

- Section 106.06.45 “Parking Requirements Per Land Use”
 - Staff also changed “Car” to “Automobile” in this section for continuity throughout the chapter. Staff also removed the provision that allows restaurant parking ratios to decrease to 1:200 from 1:100 when the total building square footage of development is over 15,000 square feet.
 - Staff requests that it remain 1:100 regardless of development size.
 - Staff added a new parking category of restaurant in include restaurants that don’t have any indoor seating and only offer pick-up or delivery, which have become increasingly popular lately and don’t require as much parking as traditional sit-down restaurants.

Staff Proposed Changes

<u>Automobile</u> Car -wash (automated)	1 space per 200 square feet of floor area; plus adequate stacking spaces per bay; minimum of 2 spaces.
<u>Automobile</u> Car -wash (self-serve)	2 spaces; plus stacking spaces for each bay.
Restaurant or cafeteria	1 space per 100 square feet of floor area. Outdoor seating areas (covered or not) under 500 square feet are exempt. When part of a multitenant development 15,000 square feet or greater, 1 space for every 200 square feet.
<u>Restaurant, pick-up or delivery only</u>	<u>1 space per 200 square feet of floor area.</u>

Recommendation

At their regular meeting on December 21, 2023, the Planning and Zoning Commission heard the request and discussed the intent behind both the proposed legal changes and the staff proposed changes.

The Planning and Zoning Commission voted to unanimously (6-0) **approve** the request subject to the following conditions:

- Simplify the building materials chart (this was addressed post PZ)
- Ensure motor vehicle is defined. (definition revised to include electric)
- Ensure Director of Development Services has ability to have designee approve plats.
 - After the meeting, Staff confirmed that current language already allows for a designee and therefore no changes have been made to the proposal amendments.