

ORDINANCE NO. 24-S-20

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS TO AMEND PART III, SCHERTZ CODE OF ORDINANCES, THE UNIFIED DEVELOPMENT CODE (UDC) ARTICLE 7 NONCONFORMING USES, LOTS AND STRUCTURES

WHEREAS, pursuant to Ordinance No. 10-S-06, the City of Schertz (the “City”) adopted and Amended and Restated Unified Development Code on April 13, 2010, as further amended (the “Current UDC”); and

WHEREAS, City Staff has reviewed the Current UDC and have recommended certain revision and updates to, and reorganization of, the Current UDC;

WHEREAS, on May 8, 2024, the Planning and Zoning Commission conducted a public hearing and, thereafter recommended approval; and

WHEREAS, on June 4, 2024, the City Council conducted a public hearing and after considering the Criteria and recommendation by the Planning and Zoning Commission, determined that the proposed amendments are appropriate and in the interest of the public safety, health, and welfare.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS THAT:

Section 1. The current UDC is hereby amended as set forth on Exhibit A hereto.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

Section 3. All ordinances and codes, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters resolved herein.

Section 4. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City hereby declares that this Ordinance would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

Section 7. This Ordinance shall be effective upon the date of final adoption hereof and any publication required by law.

PASSED ON FIRST READING, the _____ of _____ 2024.

PASSED, APPROVED and ADOPTED ON SECOND READING, the _____ of _____, 2024.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Sheila Edmondson, City Secretary

(city seal)

Exhibit "A"
Proposed Unified Development Code (UDC) Amendments
Article 7 Section 21.7.11 - Agricultural Operations

- SCHERTZ UNIFIED DEVELOPMENT CODE
ARTICLE 7. NONCONFORMING USES, LOTS AND STRUCTURES

ARTICLE 7. NONCONFORMING USES, LOTS AND STRUCTURES

Sec. 21.7.1. Purpose and intent.

- A. Within the districts established by this UDC or amendments thereto, there may exist lots, structures, uses of land and structures, and characteristics of use which were lawfully in existence and operating before this UDC was enacted, amended or otherwise made applicable to such lots, structures or uses, but which do not now conform to the regulations of the district in which they are located. It is the intent of this UDC to permit such nonconforming uses to continue, as long as the conditions within this section and other applicable sections of this UDC are met.
- B. It is further the intent of this UDC that nonconforming uses, lots and structures shall not be enlarged upon, expanded or extended, and shall not be used as a basis for adding other structures or uses prohibited elsewhere in the same district.
- C. Nonconforming uses are hereby declared to be incompatible with the permitted uses in the districts involved.

Sec. 21.7.2. Nonconforming status.

- A. Except as provided in section 21.7.9 below, any use, platted lot or structure that does not conform with the regulations of this UDC on the effective date hereof or any amendment hereto, shall be deemed a nonconforming use, platted lot or structure provided that:
 - 1. Such use, platted lot or structure was in existence under, and in compliance with, the provisions of the immediately prior UDC or code;
 - 2. Such use, platted lot or structure was a lawful, nonconforming use, platted lot or structure under the immediately prior UDC or code; or
 - 3. Such use, platted lot or structure was in existence at the time of annexation into the City, was a legal use of the land at such time, and has been in regular and continuous use since such time.
- B. Except as provided in section 21.7.9 below, any other use, platted lot or structure which does not conform with the regulations of the zoning district in which it is located on the effective date of this UDC or any amendment hereto, shall be deemed to be in violation of this UDC, and the City shall be entitled to enforce fully the terms of this UDC with respect to such use, platted lot or structure.

Sec. 21.7.3. Continuing lawful use of land and structures.

- A. A nonconforming use or structure may continue to be used, operated or occupied in accordance with the terms of the zoning regulations by which it was established, or in the case of annexed property, in accordance with the regulations under which it was created.
- B. A nonconforming structure occupied by a nonconforming use may be re-occupied by a conforming use, following abandonment of the nonconforming use.

Sec. 21.7.4. Expansion of nonconforming uses and structures.

- A. A nonconforming use may be extended throughout the structure in which it is located, provided that:
 - 1. The structure or its premises shall not be enlarged or increased in height, in floor area or in land area to accommodate extension of the nonconforming use;

-
2. No alteration shall be made to the structure occupied by the nonconforming use, except those alterations that are required by law to preserve the integrity of the structure and alterations that would upgrade the quality, safety or aesthetic appeal of the structure; and
 3. The number of dwelling units occupying the structure shall not exceed the number of dwelling units existing at the time the use became nonconforming.
- B. A nonconforming use occupying a structure shall not be extended to occupy land outside the structure.
 - C. A nonconforming use or structure shall not be enlarged, increased or extended to occupy a greater area of land than was occupied at the time the use or structure became nonconforming, except to provide additional off-street parking or loading areas required by this UDC.

Sec. 21.7.5. Abandonment of nonconforming uses and structures, and cessation of use of structures or land.

- A. If a nonconforming use or structure is abandoned, any future use of the premises shall be in conformity with the provisions of this UDC, as amended, and with any other applicable City codes, ordinances or regulations that are in effect at the time the use is resumed or the structure is re-occupied.
- B. A nonconforming use or structure shall be deemed "abandoned" in the following circumstances:
 1. The use ceases to operate for a continuous period of 180 calendar days;
 2. The structure remains vacant for a continuous period of 180 calendar days; or
 3. In the case of a temporary use, the use is moved from the premises for any length of time.
- C. If the use of any lot, tract or property that does not have a building on it and that is used for open/outside storage as of the effective date of this UDC is made nonconforming by this UDC, as amended on the effective date, then such storage use shall cease within 180 calendar days following the effective date of this UDC. The lot, tract or property shall be cleaned up and all trash, debris, stored items and vehicles, and other materials shall be removed from the premises such that the property is not a physical or visual nuisance to the public or to surrounding property owners.

Sec. 21.7.6. Substitution of nonconforming uses.

- A. A nonconforming use shall not be changed to another nonconforming use.
- B. A nonconforming use may be changed to a conforming use provided that, once such change is made, the use shall not be changed back to a nonconforming use.
- C. A conforming use located in a nonconforming structure may be changed to another conforming use, but shall not be changed to another nonconforming use.
- D. Notwithstanding any of the provisions of this section, a nonconforming HUD-Code manufactured home may be exchanged or replaced by another HUD-Code manufactured home, provided the newly located residential unit is owner-occupied.

Sec. 21.7.7. Reconstruction or repair of nonconforming structure.

- A. If more than fifty percent (50%) of the total appraised value of a nonconforming structure, as determined by the applicable county appraisal district, is destroyed by fire, the elements, or some other cause, then the structure may be rebuilt only in conformity with the standards of this UDC.
- B. If less than fifty percent (50%) of the total appraised value of a nonconforming structure, as determined by the applicable county appraisal district, is destroyed by fire, the elements, or some other cause, then the structure may be reconstructed as it was before the partial destruction but only to its original dimensions

and floor area, and provided that such reconstruction is completed within 365 calendar days following the event that caused the partial destruction. If reconstruction is delayed by contested insurance claims, litigation, or some other similar cause, then the 365 calendar day reconstruction period may be extended by the City Manager or his/her designee, at his/her sole discretion.

- C. If a nonconforming structure that is totally or partially destroyed was occupied by a nonconforming use at the time of such destruction, then the nonconforming use may be re-established subject to the limitations on expansion set forth in section 21.7.4 above.
- D. Any conforming structure that is totally or partially destroyed shall be reconstructed only in conformity with the standards of this UDC.
- E. Nothing in this UDC shall be construed to prohibit the upgrading, strengthening, repair or maintenance of any part of any structure, conforming or nonconforming, that is declared unsafe or uninhabitable by the proper authority, unless such repairs or maintenance exceeds fifty percent (50%) of the structure's appraised value, as determined by the applicable county appraisal district.

Sec. 21.7.8. Relocation of nonconforming structure.

No nonconforming structure or building shall be moved in whole or in part to any other location on the lot, or to any other location or lot, unless every portion of such structure is in compliance with all the regulations of the zoning district in which the structure is to be relocated. Such building relocation shall also require a structure relocation permit from the City, and may also require platting of the intended building site as well as Site Plan approval pursuant to this UDC.

Sec. 21.7.9. Nonconforming lots.

- A. The following types of platted lots shall be deemed in conformance with the provisions of this UDC, notwithstanding the fact that such lot does not meet the standards of this UDC in the zoning district in which it is located:
 - 1. Any vacant lot that conformed to the City's zoning district regulations at the time that it was platted; or
 - 2. Any lot occupied by a single-family dwelling authorized under the zoning district regulations in which the lot is located.
- B. Nothing in this UDC shall be construed to prohibit the use of a lot that does not meet the minimum lot standards of the zoning district in which it is located, provided that the lot is zoned for the land use(s) intended and the lot was platted as a lot of record prior to the effective date of this UDC.
- C. A lot of record located within the RA zoning district that is nonconforming may be occupied by a single-family dwelling provided that all applicable zoning standards with regard to building setbacks, building size and design criteria are met.

Sec. 21.7.10. Validation.

- A. Within the City, there exist on the following subdivisions: Belmont Park; Kramer Farm; Whisper Meadows; Northcliffe II; Tanglewood; Wynn Brook; Jonas Woods Unit 1 Lots 1-18, Block 3; Jonas Woods Unit 1 Lots 1-29, Block 2; Jonas Woods Unit 1 Lots 1-18 and 51-65, Block 1; Jonas Woods Unit 4; The Ridge at Scenic Hills; Fairhaven; The Links at Scenic Hills; and The Fairways at Scenic Hills (the "Subdivisions"), which include structural encroachments onto platted setbacks; plats with improperly designated setbacks or improper lot sizes; and improper master plans. It is the intent of this section to validate such improper encroachments, plats, and master plans in the subdivisions and to determine that such improper encroachments, plats, and master plans are deemed not to be in violation of this UDC, but only so long as the conditions within this section 21.7.10 of this UDC are met. The provisions of this section shall be limited to validate only the improper encroachments, plats, and master plans on February 24, 2009 in the subdivisions.

-
- B. The portions of existing structures encroaching onto platted setbacks in any of the subdivisions on the effective date of this UDC (validated encroaching structures) shall not be enlarged upon, expanded, or extended into the platted setback area.
 - C. If more than fifty percent (50%) of (i) the total square footage of a validated encroaching structure or (ii) the total appraised value of the validated encroaching structure, as determined by the applicable county appraisal district, is destroyed by fire, the elements, or some other cause, the validated encroaching structure may not be rebuilt within the platted setback, except as may otherwise be permitted by this UDC (other than this section). If fifty percent (50%) or less of (i) the total square footage of a validated encroaching structure or (ii) the total appraised value of the validated encroaching structure, as determined by the applicable county appraisal district, is destroyed by fire, the elements, or some other cause, the validated encroaching structure may be reconstructed as it was before the partial destruction but only to its original dimensions and footprint area within the platted setback, and provided that such reconstruction is completed within 365 calendar days following the event that caused the partial destruction. If reconstruction is delayed by contested insurance claims, litigation, or some other similar cause, the three hundred sixty-five calendar day reconstruction period may be extended by the City Manager or his/her designee, at his/her sole discretion.
 - D. No validated encroaching structure encroaching onto a platted setback shall be moved in whole or in part to any other location on the lot, unless every portion of such structure after such relocation is out of the platted setback and is in compliance with all the requirements of the zoning district for such lot and all other applicable requirements of this UDC and other applicable codes, ordinances or regulations of the City in effect at such time.
 - E. If application is made to have plats with improper setbacks, plats with improper lot sizes, and/or existing master plans for any of the subdivisions replatted or amended, any such replats or amendments shall be required to be in conformity with the provisions of this UDC (other than this section) and with all other applicable City codes, ordinances or regulations that are in effect at the time application for amendment or replatting is made.
 - F. This section is subject in all events to the property owner's rights set forth in Local Government Code Chapter 245.

Sec. 21.7.11 Agricultural Operations.

- A. Within the City of Schertz, there exists properties that have been utilized for Agricultural Operations prior to being annexed into the City of Schertz. Agricultural Operations per H.B. No 1750 include cultivating the soil, producing crops or growing vegetation for human food, animal feed, livestock forage, forage for wildlife management, planting seed or fiber, floriculture, viticulture, horticulture, silviculture, wildlife management, raising or keeping livestock or poultry, including veterinary services, and planting cover crops or leaving land idle for the purpose of participating in any governmental program or normal crop of livestock rotation procedures. Per Texas Agriculture Code Chapter 251 Section 251.0055 a city may not impose a governmental requirement that directly or indirectly prohibits the use of a generally accepted agricultural practice.
- B. In order to ensure that properties within the City of Schertz that have been utilized for Agricultural Operations can continue the following are applicable:
 - a. Land Use: Properties can be utilized for Agricultural Operations including alternating between growing crops and raising livestock regardless of the zoning designation for the property.
 - b. Expansion of Agricultural Operations: Existing Agricultural Operations can expand to include:
 - i. Increase of field crop area or increase of livestock or change in livestock species

-
- ii. Construction of Maintenance Buildings or Equipment Sheds, Barns, Accessory Buildings, Animal Cages or Corrals, Feeders or Grain Storage, or any other miscellaneous Agricultural related structure.
 - 1. Issuance of building permits will not be required for any Maintenance Buildings or Equipment Sheds, Barns, Accessory Buildings, Animal Cages or Corrals, Feeders or Grain Storage, or any other miscellaneous Agricultural related structure that is less than 2,000 square feet.
 - 2. Platting of the property and connection to sanitary sewer will not be required for construction of Maintenance Buildings or Equipment Sheds, Barns, Accessory Buildings, Animal Cages or Corrals, Feeders or Grain Storage, or any other miscellaneous Agricultural related structure.
 - 3. This does not negate the requirement to obtain any necessary building permits or any Certificate of Occupancy requirements for a commercial business that will be occupied by or serves those that do not own or work for the agricultural operation.
 - iii. Construction of additional single family detached residential dwelling units which shall only be utilized for family members or employees of the Agricultural Operations on the same property with a minimum of 5 acres per unit, up to an additional four (4) units per property.
 - 1. Issuance of building permits will be required for any additional single family detached residential dwelling units.
 - 2. Platting of the property and connection to sanitary sewer will not be required for construction of additional single family detached residential dwelling units.
 - iv. Construction of new, or repair of existing agricultural fencing in conjunction with agricultural operations, including utilizing barbed wire, is permitted without obtaining a building permit as long as the proposed fencing is within the property boundaries and does not impede sight visibility.
 - c. Development Process: Agricultural Operations are subject to all City of Schertz development regulations and processes to include but not limited to Platting, Site Plan, and Building Permits and Inspections with the exceptions provided within this section.