

ORDINANCE NO. 1505-24

AN ORDINANCE OF THE CITY OF RICHLAND HILLS, TEXAS AMENDING CHAPTER 90 "ZONING", SECTION 1.06 "NONCONFORMING USES, STRUCTURES AND LOTS" AND SECTION 6.13 "ZONING SPECIAL EXCEPTION" IN ORDER TO UPDATE PROCESSES PERTAINING TO THE EXPANSION OF LEGAL-NONCONFORMING STRUCTURES; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; PROVIDING FOR PUBLICATION AS REQUIRED BY LAW; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Richland Hills is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, pursuant to Chapter 211 of the Local Government Code, the City has adopted a comprehensive zoning ordinance and map regulating the location and use of buildings, other structures, and land for business, industrial, residential or other purposes, and providing for a method to amend said ordinance and map for the purpose of promoting the public health, safety, morals and general welfare, all in accordance with a comprehensive plan; and

WHEREAS, the City has previously adopted ordinance provisions regulating to nonconforming uses, structures, and lots; and

WHEREAS, a public hearing was held at a meeting of the Planning and Zoning Commission on June 25, 2024, and of the City Council on July 8, 2024, with respect to the proposed use changes described herein; and

WHEREAS, the City Council finds that this Ordinance is in the best interests of the citizens of the City of Richland Hills.

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

SECTION 1.

1.06 Nonconforming uses, structures and lots.

90-1.06.01 Intent of Provisions.

(A) Existence of nonconformities.

- (1) The purpose of this section is to establish provisions for the allowance and potential alteration of uses, lots, and/or structures that do not conform to

currently applicable standards or regulations, but that were in conformance with standards in place at the time of their inception, and have been rendered nonconforming due to a change in the applicable standards and regulations.

(a) Nonconformities occur in three general categories, or combinations thereof:

1. Nonconforming lots as described in subsection 1.06.02.(A)(1) below. For example, a nonconforming lot can be nonconforming as to lot area or dimension requirement.
2. Nonconforming structures as described in subsection 1.06.02.(A)(1) below. For example, a nonconforming structure can be nonconforming as to a dimension requirement, masonry requirement, or landscaping requirement.
3. Nonconforming uses are uses as described in subsection 1.06.02.(A)(1) below. For example, a nonconforming use can be the actual use, or the parking requirement associated with that particular use.

(2) It is the declared intent of this section that nonconforming uses and structures eventually be eliminated and be required to comply with the regulations of the Zoning Ordinance, having due regard for the property rights of the person affected, the public welfare, and the character of the surrounding area.

90-1.06.02 Establishment of Legal Nonconforming Status.

(A) Existence. For purposes of interpretation of this subsection, any uses, structures, or lots that in whole or part are not in conformance with current zoning standards shall be considered as follows:

- (1) Legal nonconforming. Those uses, structures, or lots that in whole or part are not in conformance with current zoning standards, but were legally established at a prior date at which time they were in conformance with applicable standards. Such uses, structures or lots may be maintained or potentially altered subject to the provisions of this subsection.
- (2) Illegal status. Those uses, structures, or lots that in whole or part are not in conformance with current zoning standards and were not in conformance with applicable standards at the time of their inception shall not be considered legal nonconforming, but shall be considered illegal uses, structures, or lots and shall not be approved for any alteration or expansion, and shall undertake necessary remedial measures to reach conformance with current standards, or be discontinued.

(B) Time of adoption. Any use, platted lot, or structure that is a lawful use at the time of the adoption of any amendment to this Ordinance but by such amendment is placed in a district wherein such use, platted lot, or structure is not otherwise permitted shall be deemed legal nonconforming.

90-1.06.03 Burden of Demonstration. The burden of establishing that any nonconformity is a legal nonconformity as defined in this subsection shall be borne by the owner or proponent of such nonconformity.

90-1.06.04 Continuing Lawful Use of Property and Existence of Structures.

(A) Discontinuance of nonconforming use.

(1) If a nonconforming use shall cease operations for a period of more than six months, then such nonconforming use shall be deemed to be permanently discontinued. Unless the board of adjustment reinstates the nonconforming rights pursuant to section 6.10 Reinstatement of Nonconforming Rights of this Ordinance, such a use shall not be instituted on that parcel or other parcel in any district that does not permit the discontinued use.

(2) For the purpose of this paragraph, to "cease operations" shall mean to intentionally terminate operations of the nonconforming use. Any nonconforming use that does not involve a permanent type of structure or operation and that is moved from the premises shall be considered to have been discontinued, regardless of intent.

(B) Reinstatement of nonconforming use rights. An owner and/or operator of a nonconforming use that has been deemed permanently abandoned pursuant to subsection (A) above, may request that the nonconforming rights to the use be reinstated pursuant to section 6.10 Reinstatement of Nonconforming Rights of this Ordinance.

(C) Prohibited expansion or reoccupation. A nonconforming use or structure shall not be expanded, reoccupied with another nonconforming use, or increased as of the effective date of this Ordinance except as provided in section 1.06.06. below.

(D) Existing platted lots are conforming lots. Any existing lot platted prior to May 6, 2014, which was legally conforming, shall be deemed a conforming lot.

90-1.06.05 Changing Uses and Nonconforming Rights.

(A) Nonconforming use to conforming use. Any nonconforming use may be changed to a conforming use, and once such change is made, the use shall not be changed back to a nonconforming use.

(B) Nonconforming use to another nonconforming use. A nonconforming use may not be changed to another nonconforming use.

(C) Conforming use in a nonconforming structure. Where a conforming use is located in a nonconforming structure, the use may be changed to another conforming use by the process outlined in section 1.06.06. below.

90-1.06.06 Expansion of Nonconforming Uses and Structures. An expansion of a nonconforming use or structure is allowed in accordance with the following:

- (A) Nonconforming use expansion in existing building.
 - (1) A nonconforming use located within a building may be extended throughout the existing building, provided:
 - (a) No structural alteration may be made on or in the building except those required by law to preserve such building in a structurally sound condition; and
 - (b) The number of dwelling units or rooms in a nonconforming residential use shall not be increased so as to exceed the number of dwelling units or rooms existing at the time said use became a nonconforming use.
 - (2) Nonconforming use within a building shall not be extended to occupy any land outside the building.
- (B) Off-street loading, parking, and landscaping requirements. Requirements for parking and landscaping for a nonconforming structure shall be as stated in the supplementary ordinances.
- (C) Residential lot exemption. The minimum residential lot areas for the various zoning districts shall be in accordance with their respective districts, except that a lot having less area than herein required that was an official "lot of record" prior to May 6, 2014 may be used for a single-family dwelling.
- (D) Nonconforming building expansion with conforming uses. Buildings or structures that in whole or part are not in conformance with current zoning standards, but were legally established at a prior date at which they were in conformance with applicable standards may expand the structure in conformance with current area regulations or development standards in this Ordinance by right. If the expansion request furthers the nonconformity, a special exception shall be requested in accordance with section 6.13.01.
- (E) Reuse of abandoned or vacant buildings by conforming uses allowed. Buildings or structures that have been vacant or abandoned for more than six months and do not meet the current area regulations or development standards shall be allowed to be reoccupied only by a conforming use.

90-1.06.07 Restoration of Nonconforming Structures.

- (A) Total destruction. If a nonconforming structure is destroyed by fire, the elements, or other cause, it may not be rebuilt except to conform to the provisions of this Ordinance.

- (B) Partial destruction. In the case of partial destruction of a nonconforming structure up to 51 percent of its total appraised value as determined by the Appraisal District, reconstruction will be permitted, but the existing square footage or function of the nonconforming structure cannot be expanded.

90-1.06.08 Movement of Nonconforming Structures.

- (A) Relocation of a nonconforming structure within a platted lot. Nonconforming structures may be relocated within the same platted lot.
- (B) Compliance. Nonconforming structures shall comply with all setback and screening requirements once relocated.

90-1.06.09 Completion of Structures. Nothing herein contained shall require any change in the plans, construction, or designated use of the following:

- (A) Approved building. A building or structure for which a building permit has been issued or a site plan approved prior to May 6, 2014.
- (B) Building in the approval process. A building or structure for which a complete application for a building permit was accepted by the building official on or before the effective date of these regulations, provided however, that such building permit shall comply with all applicable ordinances in effect on the date such application was filed.

6.13 Zoning Special Exception.

90-6.13.01 Purpose and Applicability.

- (A) Purpose. The board of adjustment is authorized to hear and decide a special exception to the Zoning Ordinance that are not permitted by right in a particular district because of potential adverse effect, but which if controlled in the particular instance as to its relationship to the neighborhood and to the general welfare, may be permitted by the board of adjustment, where specifically authorized by subsection (D) below, and in accordance with the substantive and procedural standards of the Zoning Ordinance.
- (B) Zoning special exception defined. A special exception is an allowed variation from the Zoning Ordinance, but is differentiated from a variance as the term is used in this Zoning Ordinance by the following:
 - (1) No hardship required. A special exception does not require a finding of an undue hardship.
 - (2) Specifically allowed and pre-determined by the Zoning Ordinance. Approval of a special exception by the board of adjustment is specifically provided for and defined in this Zoning Ordinance.
- (C) Requests for a zoning special exception.

- (1) The board of adjustment may grant a special exception in accordance to the provisions of subsection (D) below upon written request of the property owner.
 - (2) The zoning administrator shall process and review a special exception.
- (D) Zoning special exception authorized. When in the board of adjustment judgment, the public convenience and welfare will be substantially served and the appropriate use of the neighboring property will not be substantially injured, the board of adjustment may, in specific cases, after public notice and public hearing and subject to appropriate conditions and safeguards, authorize the following special exceptions to the regulations herein established:
- (1) Parking.
 - (a) A reduction in the number of on-site parking spaces may be granted in the nonresidential districts and for all nonresidential uses located in residential districts. Documentation justifying the reduction must be presented.
 - (b) Parking spaces may be located off-site and counted toward the parking requirements if the following requirements are met:
 1. Parking spaces are within 300 feet, measured by a straight line from the nearest point of the land on which the use served is located to the nearest point of the separated off-site parking space;
 2. A safe and accessible pedestrian connection from the parking area to the use is available; and
 3. A written agreement shall be drawn to the satisfaction of the city attorney and executed by all parties concerned assuring the continued availability of the off-site parking facilities for the use they are intended to serve.
 - (2) The board may issue a special exception to grant nonconforming status for a structure that did not conform to this Ordinance when it was constructed or established, if the board finds:
 - (a) The nonconformity was clearly and specifically shown in plans and specifications duly submitted to obtain a city permit;
 - (b) Before the work was done, neither the owner, the designer, the surveyor, the contractor nor any other person assisting with the work knew about the nonconformity;
 - (c) The nonconformity was clearly covered by the city permit (the same permit for which the plans and specifications were submitted), and the permit was otherwise regularly issued;

- (d) After learning of the nonconformity, the owner promptly conferred with the administrative official and voluntarily halted any further nonconforming work;
 - (e) The item will cause no health or safety hazard and no significant impact upon another person or property; and
 - (f) The item can be brought into conformity with this Ordinance within the time period specified in the special exception, at a modest or reasonable cost.
 - 1. Exception: Bringing the item into conformity need not be required if the board finds that the impact of the item on other persons or properties is either nil or extremely small.
- (3) The board may issue a special exception to buildings or structures that in whole or part are not in conformance with the current zoning standards, but were legally established at a prior date at which they were in conformance with applicable standards that are now requesting to further the nonconformity by way of expansion.
- 1. Furthering the nonconformity may include but is not limited to encroaching into any existing setbacks or exceeding or further exceeding the minimum lot coverage requirement in attempt to expand a nonconforming structure.
 - 2. At no time may the board grant this special exception where the requested encroachment into existing setback exceeds the encroachment present at the time the nonconformity was established. Any setback not encroached upon may not be encroached by way of this special exception.
 - 3. At no time may the board grant this special exception where the requested building height exceeds the building height present at the time the nonconformity was established. A building height in conformance with current zoning standards may not be increased by way of this special exception.
 - 4. A special exception may be issued for a building expansion where the current building size is below the required square footage and the requested expansion will not bring the building size into conformance.
- (E) The board of adjustment may impose conditions. In granting special exceptions under this section, the board of adjustment may impose such conditions as are necessary to protect adjacent property owners and to ensure the public health, safety and general welfare, including but not limited to conditions specifying the period during which the nonconforming use may continue to operate or exist before being brought into conformance with the provisions of this Ordinance.

- (F) Concurring vote of 75 percent required. Pursuant to V.T.C.A., Local Government Code § 211.009(c), the concurring vote of 75 percent of the members of the board of adjustment is necessary to grant a special exception.

**SECTION 2.
ORDINANCE CUMULATIVE**

This Ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances of the City of Richland Hills, Texas, as amended, except where the provisions of the is Ordinance are in direct conflict with the provisions of such Ordinances and such Code are hereby repealed.

**SECTION 3.
RESERVATION OF RIGHTS AND REMEDIES FOR ACCRUED VIOLATIONS**

That all rights and remedies of the City of Richland Hills are expressly saved as to any and all violations of the provisions of the City's parking regulations which 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, whether pending in court or not, under such Ordinances, 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.
PENALTY CLAUSE**

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this Ordinance shall be fined not more than Five Hundred Dollars (\$500.00) for each offense unless an offense herein details a different specific fine amount. Each day that a violation is permitted to exist shall constitute a separate offense. In addition, any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this Ordinance may be subjected to such civil penalties as authorized by law.

**SECTION 6.
PUBLICATION CLAUSE**

The City Secretary of the City of Richland Hills is hereby directed to publish caption, penalty clause, and effective date clause in the official newspaper as/if required by law.

**SECTION 7.
EFFECTIVE DATE**

This Ordinance shall be in full force and effect from and after its passage, and it is so ordained.

APPROVED AND ADOPTED at a regular meeting of the Richland Hills City Council on July 8, 2024, by a vote of _____ ayes, _____ nays, and _____ abstentions.

APPROVED:

THE HONORABLE MAYOR CURTIS BERGTHOLD

ATTEST:

LINDSAY RAWLINSON, CITY SECRETARY