

NOTABLE ZONING CHANGES

- There are 2 new Residential Zoning Districts recommended:
 1. Sec 4.5 - Patio Home (PH) District
 2. Sec 4.6 -Townhome (TH) District

New Districts have not been established to accommodate the new districts, but someone could request a Re-Zone to one of these new Residential Districts.

- Sec 4.10 - Zoning District Mobile Home Parks has been changed to Manufactured Homes Parks (MP) District
- Sec. 5. - There is 1 new Residential/Commercial Zoning District- Mixed-Use (MX) District. This new District is very diverse. A copy of the section of the Zoning Ordinance describing the District is attached.
- Section 7- The Community Service District has been eliminated. All Use Groups in the Zoning Ordinance that were in the Community Service District remain in the other Commercial Zoning Districts.
- Section 10.08 (5)- Any Residential, Accessory Building more than 200 Sq. feet must be of wood frame construction and the color and materials of the roof must resemble the color and roof of the main building.
- Section 10.08.3- Nonresidential Accessory Uses Allowed on the First Floor of Multiple-Family Developments. – If a multiple-family bonus is approved by the City Council, then the first floor of the multiple-family building may be occupied by any use allowed within the Local Retail District. (LR)
- Section 10.08.4- Small Wind Energy Systems- A small wind energy system would be allowed in all residential Zoning Districts. (With proper permits).
- Section 11- Amortization of Nonconforming Uses. The section of the Ordinance is attached.
- Section 13.- Performance Standards- This is new and requires landscaping standards & screening standards for Residential and Commercial equipment.
- Section 14.- Conditional Use Standards - This is a Name Change from Article VIII Special Conditions of the existing zoning ordinance. This covers standards and requirements that are applied to a variety of uses in a district, such as Carnivals, Child Care, Churches, Nursing Homes, Home Occupations, Junkyards, Shipping Containers, Taverns, & Property Owners' Association, Etc.

17.03.9- A filing fee of \$500.00 for a Variance to partially defray expenses of legal publication, administrative and processing costs shall accompany each application.-This is an increase from \$150.00. The cost for publishing a Variance request in the paper averages \$100.00. Mail notification, use of the Council Chamber, and City Staff participation is added to the process.

17.04.7 -A filing fee of \$1,000.00 for the Specific Use Permit- This is an increase from \$300.00. The cost for publishing a Specific Use Permit in the paper, because the City is charged by the line, averages \$300.00. Mail notification, use of the Council Chamber, and City Staff participation is added to the process.

- Section 19.- Amendments (RE-Zone Request)

19.02 a filing fee of \$1,000.00 A filing fee for a RE-Zone Request- This is an increase from \$400.00. The cost for publishing a Re-Zone request in the paper, because the City is charged by the line, averages \$300.00. Mail notification, use of the Council Chamber, and City Staff participation is added to the process.

SECTION 5 – MIXED-USE DISTRICTS

Section 5. Mixed-Use (MX) Districts

5.01 Purpose and Intent.

The MX District is established to provide for high density, multiple family residential development, generally with a minimum density of 40 dwelling units per acre; for mixed use development consisting primarily of multiple family residential development, generally with a density of at least 20 dwelling units per acre, with secondary office and/or other commercial uses. MX Districts should be located in those limited areas where such high density residential or residential mixed use development is in accordance with the adopted comprehensive plan such as within areas delineated as Commercial Revitalization Areas and Urban and Suburban Centers. The MX District regulations are designed to promote high standards in design and layout, to encourage compatibility among uses within the development and integration with adjacent developments, to encourage the use of Transportation Demand Management techniques, and to otherwise implement the stated purpose and intent of this Ordinance and the recommendations of the comprehensive plan.

5.02 Principal Uses Permitted.

The following principal uses shall be permitted subject to the approval of a final development plan prepared in accordance with the provisions of the City of Deer Park, and subject to the use limitations set forth in Section 5.06 below.

- Dwellings, multi-family.
- Public uses.

5.03 Secondary Uses Permitted.

The following secondary uses shall be permitted only in a MX District which contains one (1) or more principal uses; only when such uses are presented on an approved final development plan prepared in accordance with the provisions of the City of Deer Park, and subject to the use limitations set forth in Section 6.06 below.

- Church or other place of worship.
- Private schools of general and special education.
- Colleges, universities
- Medical offices and related facilities.
- Financial Institutions.
- Offices.
- Business services.
- Office supply service establishments.
- Commercial swimming pools, tennis courts and similar courts
- Health clubs
- Residential Dwellings
 - a. Single-family attached;
 - b. Multifamily;
 - c. Congregate living facilities;
 - d. Affordable dwelling units;

SECTION 5 – MIXED-USE DISTRICTS

- e. Independent living facilities; and
- f. Student housing.
- Eating establishments.
 - a. Sit down restaurants.
 - b. Fast food restaurants.
 - c. Quick-service food stores.
- Hotels, motels.
- Shopping-type Consumer Goods and Related Services limited to:
 - a. Antique store;
 - b. Camera and photographic supplies: sales and rental;
 - c. Dry goods store;
 - d. Jewelry, sales and repair;
 - e. Music, musical instruments, phonograph record shop; and
 - f. Bowling alley.
- Cultural centers, museums and similar facilities
- Repair service establishments.
- Retail sales establishments.
- Theatres.
- Veterinarian: office only
- Vehicle transportation service establishments.

5.04 Special Permit Uses.

For specific Group uses, regulations and standards, refer to Section 17.04

5.05 Special Exception Uses.

1. Subject to the use limitations presented in Section 5.06 below, any use presented in Section 5.03 above as a Group or Category use may be permitted with the approval of a special exception when such use is not specifically designated on an approved final development plan.
2. Group 11 – Community Facilities, limited to:
 - a. Sports arenas
 - b. Stadiums
 - c. Club or lodge, private
3. Group 12 – Public Utility and Related Facilities, limited to:
 - a. Heliports
 - b. Helistops
 - c. Bus terminal

5.06 Use Limitations.

1. A final development plan shall be submitted and approved concurrently with the conceptual development plan for the proposed development. The conceptual and final development plan shall specify the uses and

SECTION 5 – MIXED-USE DISTRICTS

gross floor area for the proposed development and shall provide site and building designs that will integrate with the adjacent communities and complement existing and planned development by incorporating high standards of urban design. The plan shall also be in general accordance with any specific urban design concept and streetscape plans for the area including the provision of convenient and accessible pedestrian walkways and connections, all as set forth in the adopted comprehensive plan.

2. The principal residential use shall be multiple family dwelling units. Single family attached dwellings may be allowed at the periphery of the development to provide a transition from the high density development to adjacent lower density development.
3. All uses shall be designed to be harmonious with and not adversely affect the use or development of neighboring properties.
4. Secondary uses may be permitted only in a MX District where at least 50 percent of the total gross floor area in the development is devoted to multiple family dwellings.
5. The floor area for dwellings shall be determined in accordance with the gross floor area definition, except the following features shall not be deemed gross floor area: balconies, porches, decks, breezeways, stoops and stairs which may be roofed but which have at least one open side; or breezeways which may be roofed but which have two (2) open ends. An open side or open end shall have no more than 50 percent of the total area between the side(s), roof and floor enclosed with railings, walls, or architectural features.
6. Drive-through facilities shall not be permitted.
7. Vehicle transportation service establishments shall be permitted in accordance with the following:
 - a. The total number of company vehicles permitted on site at any given time shall not exceed five (5).
 - b. There shall be no maintenance or refueling of vehicles on site.

5.07 Lot Size Requirements.

1. Minimum District Size.
Two (2) acres, provided the proposed development is in accordance with the adopted comprehensive plan and the purpose and intent and all of the standards and requirements of the MX District.
2. Minimum Lot Area.
No requirement for each use or building, provided that a privacy yard, having a minimum area of 200 square feet, shall be provided on each single family attached dwelling unit lot, unless waived by the Board in conjunction with the approval of a rezoning application or by the Planning Commission in conjunction with the approval of a subsequent final development plan amendment.
3. Minimum Lot Width.
No requirement for each use or building.

SECTION 5 – MIXED-USE DISTRICTS

5.08 Bulk Regulations.

In a mixed building in any district, the bulk and area regulations applicable to nonresidential buildings shall apply, except as follows:

- Usable open space shall be provided, as required for residential buildings.
- Yards and courts shall be provided contiguous to all exterior walls of dwelling units in a multiple use building where such walls contain windows or doors, in the same manner and to the same extent as is required for any residential building, but such yards or courts need not extend below the elevation of the lowest floor of the dwelling units having such walls.

5.09 Open Space.

Not less than 20 percent of the gross area shall be landscaped open space. Not more than one-half (1/2) of the minimum required landscaped open space shall be permitted above the street level, unless otherwise modified by the Board upon specific request.

Recreational facilities, such as swimming pools, exercise rooms, or health clubs, which are located on rooftops, deck areas and/or areas within a building, may be used to fulfill this requirement. The requirement for providing recreational facilities shall be based on a minimum expenditure of \$1800 per dwelling unit for such facilities and either:

1. The facilities shall be provided on-site by the developer in substantial conformance with the approved final development plan, and/or
2. The Board may approve the provision of the facilities on land which is not part of the subject MX District.

Notwithstanding the above, in affordable dwelling unit developments, the requirement for a per dwelling unit expenditure shall not apply to affordable dwelling units.

SECTION 11 – AMORTIZATION OF NONCONFORMING USES

Section 11. Amortization of Nonconforming Uses

11.01 Initiation of Compliance Case

Only the City Council, by majority vote, may request that the Board of Adjustment consider establishing a compliance date for a nonconforming use.

11.02 Public Hearing Process

Upon receiving a request under 11.01 Initiation of Compliance Case from the City Council, staff shall schedule the First Public Hearing before the Board. The Board may establish a compliance date only after holding two (2) separate hearings.

11.02.1. First Public Hearing.

The Board shall hold a public hearing to determine whether continued operation of the nonconforming use will have an adverse effect on nearby properties. If, based on the evidence presented at the public hearing, the Board determines that continued operation of the use will have an adverse effect on nearby properties, it shall schedule a second public hearing to establish a compliance date for the nonconforming use; otherwise, it shall not. In determining whether the continued operation will have an adverse effect on nearby properties, the Board shall consider the following factors:

- The character of the surrounding neighborhood.
- The degree of incompatibility of the use with the zoning district in which it is located.
- The manner in which the use is being conducted.
- The hours of operation of the use.
- The extent to which continued operation of the use may threaten public health or safety.
- The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.
- The extent to which public disturbances and nuisances may be created or perpetuated by continued operation of the use.
- The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.
- Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.

11.02.2. Second Public Hearing.

1. If the Board has determined in the first public hearing that the nonconforming use has an adverse effect on nearby properties, it shall hold a second public hearing to set a date for compliance. The Board shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period. The following factors must be considered by the Board in determining a reasonable amortization period.

SECTION 11 – AMORTIZATION OF NONCONFORMING USES

- a. The owner's 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 before the time the use became nonconforming.
 - b. Any costs that are directly attributable to the establishment of compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
 - c. Any return on investment since inception of the use, including net income and depreciation.
 - d. The anticipated annual recovery of investment, including net income and depreciation.
 - e. A reasonable wind-up period for the nonconforming use.
2. If the Board, at the first public hearing, requests financial documentation and/or records from the owner relating to the factors listed directly above, the owner shall provide said documents and/or records at least 30 days before the second public hearing. If the owner does not provide said documentation, the Board is authorized to make its determination of a compliance date based upon any reasonably available public records as well as public testimony at the hearing. Failure by owner to provide the requested financial documents and records shall not prevent the Board from setting a compliance date.

11.03 Ceasing Operations

If the Board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.

11.04 Definitions

For purposes of this subsection, "owner" means the owner of the nonconforming use at the time of the Board's determination of a compliance date for the nonconforming use.

11.05 Finality of Decisions

11.05.1. Decisions that cannot be Immediately Appealed.

A decision by the Board that the continued operation of a nonconforming use will have an adverse effect on neighboring property and the Board's decision to schedule a second public hearing to establish a compliance date are not final decisions and cannot be immediately appealed.

11.05.2. Decision to Deny a Request to Establish a Compliance Date.

A decision by the Board to deny a request to establish a compliance date is final unless appealed to state court within 10 calendar days in accordance with Chapter 211 of the Local Government Code.

11.05.3. Decision Setting a Compliance Date.

A decision by the Board setting a compliance date is final unless appealed to state court within 10 calendar days in accordance with Chapter 211 of the Local Government Code.

SECTION 11 – AMORTIZATION OF NONCONFORMING USES

11.06 Reinstatement of Nonconforming Rights

11.06.1. Loss of Nonconforming Rights Status.

If the Director or other designee determines that a nonconforming use has been permanently abandoned under 1.07.4(2) Reinstatement of Nonconforming Use Rights and has lost its nonconforming rights, the use shall not be instituted on that parcel or other parcel in any district which does not permit the discontinued use.

11.06.2. Notice to Owner and/or Operator Required.

Notice of this determination shall be made in writing to the owner and/or operator of the abandoned nonconforming use.

11.06.3. Application for Nonconforming Rights Reinstatement.

1. The owner and/or operator of the abandoned nonconforming use may submit a written application to the Board to have the nonconforming rights reinstated.
2. Written application for reinstatement of nonconforming rights must be made within 10 business days after the Director and/or his designee issues the written notice of determination that a use has been permanently abandoned.

11.06.4. Board Decision.

The Board may reinstate nonconforming rights only if the Board finds there was a clear intent not to abandon the use even though the use was discontinued for six (6) months or more. The failure of the owner and/or operator to remove on-premise signs shall not be considered (on its own) evidence of a clear intent not to abandon the use.