



**October 21, 2024**

## **Special Meeting of the Planning & Zoning Commission**

Notice is hereby given of a Special Meeting of the Nacogdoches Planning & Zoning Commission to be held on the above date via videoconference beginning at 5:00 p.m. for the purpose of considering the following agenda items.

Some Commission members may attend via videoconference but a quorum of the Commission and the Presiding Officer will be present at the above-stated physical location. The meeting will be streamed live at <https://www.nactx.us/21>. There will be an opportunity for the public to comment on agenda items in person at the specified location.

**PLEASE LIMIT PRESENTATIONS TO THREE MINUTES  
(UNLESS PRIOR APPROVAL IS OBTAINED)**

1. CALL TO ORDER.
2. PLEDGE OF ALLEGIANCE.
3. Open Forum: In addition to public comment on agenda items, the Commission offers an open forum whereby citizens may comment on governance issues over which the City of Nacogdoches has domain. In accordance with the Texas Open Meetings Act, members of the Commission shall not discuss, deliberate, or make any decisions on topics not posted as an agenda item. Speakers should address all remarks to the Commission and limit your remarks to no more than 3 minutes.
4. REGULAR AGENDA: City Council will receive staff recommendations and public input on the following items, and may deliberate and take formal action on the item.
  - A. **Public Hearing:** Consider amending the Code of Ordinances of the City of Nacogdoches, Texas, Chapter 78- "Signs", Article I.- "In General", Article IV- "Permits", and Article V.- "Regulations for On-Premises Signs by District", of the code of ordinances to define feather-type signs and allow for further control of placement, maintenance, and the number of times these signs can be used throughout the year.
  - B. **Public Hearing:** Consider a recommendation to the City Council for an ordinance amending Chapter 46 - "Health and Sanitation", Article III. - "Smoking Pollution Control", and Chapter 118 - "Zoning", Article I - "In General", Article III. - "District Regulations", and Article IV. - "Supplementary District Regulations", to regulate the use of 'Retail tobacco/vapor/smoke Store'.
  - C. **Public Hearing:** Consider a recommendation to the City Council to amend Chapter 118- "Zoning",

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Article II.-“Administration”, Division 1 “Generally”, Sec. 118-141 – “Protest of proposed change in zoning”, to change the word “commission” to City Council.

D. **Public Hearing:** Consider a recommendation to amend Chapter 118 “Zoning”, Article II “Administration”, Division 3 “Board of Adjustment”, of the Code of Ordinances of the City of Nacogdoches, Texas, to clarify Board of Adjustment appeal procedures by revising the number of days to file an appeal and whom may appeal city planner decisions.

5. Discussion and possible action on future agenda items: A Planning & Zoning Member may inquire about a subject for which notice has not been given. A statement of specific factual information or the recitation of existing policy may be given. Any deliberation shall be limited to a proposal to place the subject on an agenda for a subsequent meeting.

6. ADJOURN.

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Aimee Cloutier, Planning Coordinator

The City Council Chambers is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Planning Department at (936) 559-2574 or FAX (936) 559-2910 for further information.

This agenda is posted as required under G. C. Section 551.041. For more information or a copy of the Open Meetings Act, please contact the Attorney General of Texas at 1-800-252-8011; the City Secretary at (936) 559-2506 or visit the City of Nacogdoches web site at [www.nactx.us](http://www.nactx.us).

#### CERTIFICATION

I certify the notice of the meeting was posted in the directory outside of City Hall, 202 E. Pilar Street, Nacogdoches, Texas on October 18, 2024, by 5:00 p.m. and remained posted until the meeting convened.

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Aimee Cloutier, Planning Coordinator

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**PRESENTER:** Nathan Dietrich, Planning Consultant

**ITEM/SUBJECT: Public Hearing:** Consider amending the Code of Ordinances of the City of Nacogdoches, Texas, Chapter 78- “Signs”, Article I.- “In General”, Article IV- “Permits”, and Article V.- “Regulations for On-Premises Signs by District”, of the code of ordinances to define feather-type signs and allow for further control of placement, maintenance, and the number of times these signs can be used throughout the year.

**OVERVIEW:**

At the request of the City Council, staff conducted an inquiry into whether certain types of on-premises signs were defined and regulated within city limits. Upon review, it was determined that these specific signs were not currently addressed in the city's existing regulations.

The concern raised by the Council focused on the lack of oversight regarding these signs, particularly in terms of maintenance, placement, and frequency of use by commercial entities. Without clear regulations, there is no formal process for enforcement or policing of these signs, which could lead to issues in aesthetics, safety, and consistency.

To address this, City staff consulted with internal departments responsible for code enforcement to better understand the practical challenges in maintaining and regulating these signs.

Additionally, staff researched how surrounding cities—including San Antonio, Elgin, and Alvin—manage similar signage issues. The findings revealed a variety of approaches: some jurisdictions allowed the signs with specific exceptions, others prohibited them entirely, and a few had only minimal regulations in place.

**STAFF REVIEW:**

After gathering this information, staff collaborated with code enforcement to identify reasonable and enforceable requirements. The goal was to create a regulatory framework that would both simplify enforcement and ensure that the signs are properly maintained, strategically placed, and used in a manner that aligns with the city's overall standards.

Staff is now prepared to present these proposed regulations to the City Council for further discussion and consideration.

Section 78-1 (Definitions)

**Add:**

Feather sign (aka teardrop) means a sign in a feather, flutter, square, teardrop, and half drop shape usually self-supported or supported by a flexible pole(s) and firmly affixed to the ground.

Section 78-4 “Signs prohibited”

**Add:**

Feather signs except as allowed in sections 78-98 through 78-100.

Section 78-79 “Permit Fees and Licenses”

**Add:**

Feather signs .... \$25.00

Section 78-98 “Signs permitted in B-1,B-3, and “M” Zoning Districts”

**Add:**

Changes to the numbering and the following:

Feather signs may be used, subject to the following regulations:

- a. Securely attached to the ground by an approved mounting system designed for its specific purpose and to ensure the safety of the sign and citizens.
- b. Shall not be so located in an area so as to create an obstruction that would create a visual obstruction/traffic hazard to motorists. It may not be located on the public right of way.
- c. Maximum area of 20 square feet.
- d. Maximum height of 12 feet measured from ground to top of the sign.
- e. Shall be maintained in good repair, and should the sign become tattered or torn, it shall be replaced or removed.
- f. Shall not be illuminated.
- g. Spacing shall be no closer than fifty (50) feet between feather signs.
- h. Permits must be obtained before the placement of feather signs.
- i. Each permit will be valid for thirty (30) days.
- j. Each occupancy may obtain no more than (4) feather sign permits per year.
- j-k. Shall not be located in the historic district-downtown historic district.

**STAFF RECOMMENDATION:**

Staff recommends approval of the text Amendment as outlined in the attached ordinance and as shown above.

**CITY CONTACT:** Nathan Dietrich  
Third-Party Planning Consultant  
[dietrichn@nactx.us](mailto:dietrichn@nactx.us)

**ATTACHMENTS:** 1. Survey of City Ordinances\_feather signs  
2. Proposed Ordinance\_78\_Signs\_feather signs

**City of San Antonio:**

*Feather sign (aka feather-type sign)* means a sign in a feather, flutter, square, teardrop and half drop shape usually self-supported or supported by a pole(s) and firmly affixed to the ground.

**Sec. 28-47. - Provisions applicable to nonresidential zoning districts.**

(e) Special regulations for nonresidential zoning districts.

...

(3) *Ground-mounted flag/feather type signs.* In addition to other authorized signs, businesses shall be allowed ground-mounted flag/feather type signs on the non-residential lot provided all the following conditions listed below are met.

a. The ground-mounted flag/feather type sign is securely attached to the ground by an approved mounting system designed for its specific purpose and to ensure the safety of the sign and citizens.

b. No sign shall be so installed/located as to create an obstruction that would interfere with use of any public right-of-way or to create a visual obstruction/traffic hazard to motorists.

c. The sign is installed on non-residentially zoned and/or non-residentially used private property. It may not be located on the public right-of-way.

d. The sign has a maximum area of twenty (20) square feet and maximum height of twelve (12) feet measured from ground to top of the sign.

e. Each ground-mounted flag-feather type flag is spaced/separated from any other ground mounted flag/feather type sign a minimum of fifty (50) feet.

*Exception:* Up to three (3) ground-mounted feather type flags may be installed in a grouping with less than fifty (50) feet separation, so long as the grouping is separated from another individual and/or grouping of ground-mounted feather type flags.

*Commentary:* Note ground-mounted flag/feather type devices without lettering or symbols are not considered signs per this section are therefore are not regulated as such. Note that while these devices without letters or symbols are not considered signs they are still not permitted to be installed in the public right-of-way.

**City of Elgin:**

*Feather sign* means a sign that is shaped like a feather, these signs are typically on a single staff and are designed to flap in the wind.

**Sec. 32-267. - Enumerated.**

The following are expressly prohibited unless specifically stated otherwise in this chapter:

- (1) *Animated and moving signs.* Including, but not limited to, pennants, feather signs, flags with commercial messages, banners, streamers, propellers, discs and searchlights.

**City of Alvin:**

*Feather flag* means a freestanding flexible or rigid pole (not a flagpole) temporarily mounted in the ground to which one side of a flexible fabric in the shape of a feather or similar shape, is attached and which is used for the primary purpose of advertising or attention getting. Feather flags are also known and sold under names which include, but are not limited to, "feather sign," "feather banner," "feather banner sign," "quill sign," "banana banner," "blade banner," "flutter banner," "flutter flag," "bow flag," "teardrop banner," etc. This definition includes functionally similar display devices. Feather flags are prohibited with limited exceptions (see section 17½-5(24).

**Sec. 17½-5. - Exceptions and exemptions.**

The below-listed classes of signs are allowed to be erected or placed within the city:

...

(24) For any business establishment, one temporary on-premises feather flag may be allowed and displayed on private property owned by any individual or group, subject to the following restrictions:

- a. No such feather flag shall be erected unless a permit is first obtained from the Code Enforcement Officer.
- b. Feather flag shall be constructed of plastic, fabric or film.
- c. Feather flag shall not exceed thirty-two (32) square feet and only one feather flag may be displayed with each permit.
- d. The permit for such feather flag shall be issued for a maximum of twenty-eight (28) consecutive days four (4) times a year, with a permit for each occurrence. Each occurrence may be taken as one twenty-eight-day permit or divided into two (2) fourteen-day permits.
- e. At no time shall a feather flag project above the roofline or hang from awnings, attached with rope between pillars or poles of any building on the premises or in any right-of-way or easement.
- f. All feather flags shall be kept in good repair (i.e., not tattered, unanchored, faded, frayed or unsightly). All feather flags shall be installed in a secure manner and not obstructing view of traffic.
- g. If any violations are found or exist, the Code Enforcement Officer has the authority to issue citations and/or discretion to remove the feather flag without further notice to the property owner. Any feather flags removed by the Code Enforcement Officer will be immediately disposed of.
- h. Any new business is allowed an additional fourteen (14) consecutive days within ninety (90) days from the date on the Certificate of Occupancy (see section 17½-58(c), special event signs, grand opening signs).

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF NACOGDOCHES, TEXAS, AMENDING CHAPTER 78 – “SIGNS”, ARTICLE I. – “IN GENERAL”, ARTICLE IV. – “PERMITS”, AND ARTICLE V – “REGULATIONS FOR ON-PREMISES SIGNS BY DISTRICT”, OF THE CODE OF ORDINANCES OF THE CITY OF NACOGDOCHES, TEXAS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A CONTINUATION CLAUSE; PROVIDING A REPEAL CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**RECITALS:**

**WHEREAS**, the City of Nacogdoches is authorized under Chapter 216 of the Texas Local Government Code to license, regulate, control, or prohibit the erection of signs or billboards within the corporate limits of the City of Nacogdoches by charter or ordinance; and

**WHEREAS**, the City Council of the City of Nacogdoches has adopted such ordinances to encourage aesthetically pleasing design of such signs consistent with the standards of the adopted comprehensive plan, and in order to establish uniform standards for the placement of such signs; and

**WHEREAS**, the objectives of the sign ordinances, as stated in Chapter 78 of the Code of Ordinances, are to balance the rights of individuals to convey their messages through signs and the right of the public to be protected from potential harm; promote the health, safety, welfare, convenience and enjoyment of the public; protect the public from damage or injury caused or attributable to distractions and destructions caused by improperly designed or located signs; protect and promote property values; promote community environmental setting and appearance, especially where scenic beauty is important; and to support the objectives of the individual zoning districts; and

**WHEREAS**, in order to further these objectives, the City Council has determined the need to amend certain portions of these Sign ordinances as set forth herein;

**NOW, THEREFORE BE IT ORDAINED BY THE CITY OF NACOGDOCHES:**

**SECTION I**

All above premises are hereby found to be true and correct legislative and factual findings.

**SECTION II**

CHAPTER 78 - SIGNS, ARTICLE I. - IN GENERAL, of the Code of Ordinances of the City of Nacogdoches, Texas, is hereby amended, as set hereafter to read as follows:

**Sec. 78-1. Definitions.**

All words used in the present tense shall include the future.

All words in the singular number include the plural number and all words in the plural number include the singular number.

The word “person” includes “corporation”, “co-partnership”, “association”, and “individual”.

The word “shall” is mandatory and not discretionary.

Terms not herein defined shall have the meaning assigned to them in the Building Codes of the City of Nacogdoches. Terms not defined herein or in the building codes shall have the customary meaning assigned to them.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Abandoned sign* means a sign which no longer identifies or advertises a bona fide business, lessor, service, owner, product, or activity, and/or for which no legal owner can be found.

*Advertising* means to convey information, to seek the attraction of or to direct the attention of the public to any location, event, person, activity, goods, services, or merchandise.

*Authority having jurisdiction* means knowledgeable and qualified employees of the city who have backgrounds which will enable them to understand easily and quickly the issues presented in relation to rendering of interpretations of this chapter. The authority having jurisdiction is responsible for reviewing sign applications, issuing sign permits, and accepting variance requests and is responsible in enforcing all aspects of this chapter.

*Awning* means a shelter projecting from and supported by the exterior wall of a building constructed of nonrigid materials on a supporting framework (compare “marquee”).

*Awning sign* means a sign painted on, printed on, or attached flat against the surface of an awning.

*Balloon or inflatable signs* mean any form of advertisement in the form of or attached to a balloon or other inflatable, inflated or floating device, which is larger than two feet in diameter.

*Banner sign* means a strip of durable fabric on which a sign is printed; paper or reinforced cardboard type signs are not considered banner signs.

*Billboard.* See “off-premises sign.”

*Board of sign control and appeals.* See section 78-33.

*Building* means any structure that encloses a space used for sheltering any occupancy. Each portion of a building separated from other portions by a fire-wall shall be considered as a separate building.

*Building official* means the officer or other designated authority or his duly authorized representative, charged with the administration and enforcement of the construction codes.  
*Cabinet* means a sign component that houses the other components of a sign.

*Changeable copy sign (automatic)* means a sign on which the copy changes automatically on a lamp bank or through mechanical means, e.g., electrical or electronic time and temperature units.

*Changeable copy sign (manual)* means a sign on which copy is changed manually in the field, e.g., reader boards with changeable letters.

*City-owned property* means property owned or controlled by the City of Nacogdoches, Texas.

*Clearance (of a sign)* means the smallest vertical distance between the grade of the adjacent street or street curb and the lowest point of any sign, including framework and embellishments, extending over that grade.

*Community support signs* mean on-premise signs not consisting of a portable sign as defined by this chapter, which promote community spirit and support public or semi-public organizations; but do not advertise a commercial product or service or special event. Examples include, but are not limited to “Home of a Nacogdoches Dragon” signs or “SFA Game today” signs.

*Construction sign* means a temporary sign identifying an architect, contractor, subcontractor, and/or material supplier participating in construction on the property on which the sign is located.

*Copy* means the wording on a sign surface in either permanent or removable letter form.

*Curbline* means an imaginary line drawn along and parallel to the outermost part or back of the curb and gutter on either side of a public street; or, if there is no curb and gutter, along and parallel to the outermost portion of the paved street; or, if there is no paved street, along and parallel to the outermost edge of the traveled portion of the street.

*Day* means the portion of one calendar day from sunrise to sunset.

*Directional/information sign* means an on-premises sign giving directions, instructions, or facility information and which may not contain the name or logo of an establishment and which may contain no advertising copy, e.g., parking or exit and entrance signs.

*District* means any section of the city for which the regulations governing the use of land and the use, density, bulk, height, and coverage of buildings and other structures are uniform for each class or kind of building therein. Also see “zoning district.”

*Double-faced sign* means a sign with two faces.

*Early voting period* as defined in V.T.C.A., Election Code § 85.001.

*Electioneering* as defined in V.T.C.A., Election Code § 85.036.

*Electrical sign* means a sign or sign structure in which electrical wiring, connections, or fixtures are used.

*Electronic message centers* means a sign or portion of a sign, that displays an electronic image or video, which may or may not include text, including any sign or portion of a sign that uses changing lights or similar form of electronic display such as LED to form a sign message or messages with text and or images wherein the sequence of messages and the rate of change is electronically programmed and can be modified by electronic processes. This definition includes without limitation television screens, plasma screens, digital screens, flat screens, LED displays, video boards, and holographic displays.

*Facade* means the entire building front including the parapet.

*Face of sign* means the area of a sign on which the copy is placed.

*Feather sign (aka tear drop) means a sign in a feather, flutter, square, teardrop and half drop shape usually self-supported or supported by a flexible pole(s) and firmly affixed to the ground.*

*Festoons* means a string of ribbons, tinsel, small flags, or pinwheels.

*Flag, corporate.* The official flag of a company including logo flags.

*Flag, spirit.* School flags or flags that contain crests, pictures and such but contain no advertising.

*Flashing sign* means a sign which contains an intermittent or sequential flashing light source used primarily to attract attention, utilizing a lighting source such as an incandescent or fluorescent light bulb, LED or other source of illumination. The term does not include changeable copy signs, animated signs, or signs which, through reflection or other means, create an illusion of flashing of intermittent light (compare “animated sign” and “changeable copy sign”).

*Freestanding sign* means a sign supported upon the ground by poles or braces and not attached to any building.

*Frontage* means the length of the property line of any one premises along a public right-of-way on which it borders.

*Frontage (building)* means the length of an outside building wall on a public right-of-way.

*Government sign* means any temporary or permanent sign erected and maintained by the city, county, state, or federal government for traffic direction or for designation of or direction to any school, hospital, historical site, or public service, property, or facility.

*Height (of a sign)* means the vertical distance measured from the highest point of the sign, excluding decorative embellishments, to the grade of the adjacent street or the surface grade beneath the sign, whichever is less (compare “clearance”).

*Holiday signs* means temporary signs containing only holiday messages and no commercial advertising.

*Home occupation* means any occupation or activity conducted within a dwelling unit which is clearly incidental and subordinate to the use of the premises for dwelling purposes (see chapter 118, zoning).

*Identification sign* means a sign whose copy is limited to the name and address of a building, institution, or person and/or to the activity or occupation being identified.

*Illegal sign* means a sign which does not meet the requirements of this chapter and any applicable state laws or which has not received exempt status.

*Illuminated sign* means a sign with an artificial light source incorporated internally or externally for the purpose of illuminating the sign.

*Incidental sign* means a small sign, emblem, or decal informing the public of goods, facilities, or services available on the premises, e.g., a credit card sign or a sign indicating hours of business, and not exceeding two square feet. The term means any sign located within the confines of a project which is not legible from any public right-of-way.

*LED* means light emitting diode.

*Lot* means a parcel of land legally defined on a subdivision map recorded with the appraisal district, or a parcel of land defined by a legal record or survey map.

*Low profile sign* means a sign having a maximum height of 11 feet and a maximum sign area of 60 square feet or less.

*Maintenance* means the cleaning, painting, repair, or replacement of defective parts of a sign in a manner that does not alter the basic copy, design, or structure of the sign.

*Mansard* means a permanent roof-like structure or canopy of rigid materials supported by and extending from the facade of a building (compare “awning”).

*Marquee* means a permanent canopy, awning, or roof-like structure of rigid materials supported by and extending from the facade of a building. A marquee is considered to be part of the building.

*Marquee sign* means any sign attached to or supported by a marquee structure.

*Nameplate* means a nonelectric on-premises identification sign giving only the name, address, and/or occupation of an occupant or group of occupants.

*Night* means the portion of two calendar days from sunset to sunrise.

*Nits* means candela per meter square used as a measurement of brightness.

*Occupancy* means the portion of a building or premises owned, leased, rented, or otherwise occupied for a given use.

*Office, retail, downtown, (B-1, B-2, B-3)* means an identification of city zoning districts; refer to the zoning map for the location of districts.

*Off-premises sign* means a sign advertising an establishment, merchandise, service, or entertainment which is not sold, produced, manufactured, or furnished at the property on which the sign is located, e.g., billboards or outdoor advertising.

*On-premises sign* means a sign which pertains to the use of the premises on which it is located. Refer to chapter 118, zoning.

*Owner* means a person recorded as such on official records or the on-premises person in control of the premises. For the purposes of this chapter, the owner of property on which a sign is located is presumed to be the owner of the sign unless facts to the contrary are officially recorded or otherwise brought to the attention of the building official, e.g., a sign leased from a sign company.

*Painted wall sign* means any sign which is applied with paint or similar substance on the face of a wall.

*Parapet* means the extension of a false front or wall above a roofline.

*Pennant* means a triangular-shaped or other shaped ribbon or device which is greater than one inch in length and used either singularly or in groups on a line or pole for advertising purposes or for attracting the attention of the public.

*Person* means any individual, corporation, association, firm, partnership, or similarly defined interest.

*Point of purchase display* means advertising of a retail item accompanying its display, e.g., an advertisement on a product dispenser.

*Pole covers* means covers enclosing or decorating poles or other structural supports of a sign.

*Pole banners* mean banners located on private light standards and poles, not to exceed 24 total square feet per pole.

*Political sign* means a temporary sign used in connection with a local, state, or national election or referendum.

*Portable sign* means any sign designed or constructed to be easily moved from one location to another and not permanently affixed to the ground or to a structure or building, including signs mounted upon or designed to be mounted upon a trailer, bench, wheeled carrier, or other nonmotorized mobile structure. A portable sign which has its wheels removed shall still be considered a portable sign under this definition.

*Premises* means a tract of land with buildings or part of a building, with its appurtenances.

*Prohibited area* is the area within which V.T.C.A., Election Code § 85.036(a) prohibits electioneering during the time an early voting or voting place is open for the conduct of early voting or voting.

*Projecting sign* means a sign, other than a flat wall sign, which is attached to and projects from a building wall or other structure not specifically designed to support the sign.

*Public property* means property owned or controlled by a public entity.

*Public right-of-way (public street)* means that land dedicated for public use commonly as a street, roadway, alley, bridge, or thoroughfare, and most often extends the entire width between property lines of any roadway, street, alley, bridge, or other similar thoroughfare, not privately owned or controlled, when any part thereof is open to the public for vehicular traffic, is the responsibility of the city or other similar public agency to maintain, and over which the city has legislative jurisdiction under its police power.

*Real estate sign* means a temporary sign advertising the real estate upon which the sign is located as being for rent, lease, or sale.

*Roof sign* means any sign erected over or on the roof of a building (compare “wall signs”).

*Roofline* means the top edge of a roof or building parapet, whichever is higher, excluding any cupolas, pylons, chimneys, or minor projections.

*Rotating sign* means a sign in which the sign itself or any portion of the sign moves in a revolving or similar manner. Such motion does not refer to methods of changing copy.

*Searchlight* means an apparatus containing a strong light source and a reflector for projecting a bright beam of light, usually truck or trailer mounted.

*Shopping center.* See “strip center.”

*Sign* includes but is not limited to any device, structure, fixture, or placard using graphics, symbols, and/or written copy designed specifically for the purpose of advertising or identifying any person, persons, political party, event, establishment, product, goods, or services.

*Sign, area of,* means the area determined as follows:

- (1) *Projecting and freestanding signs.* The area of the sign shall be measured as follows:
  - a. If the sign is composed of one or two individual cabinets, the area around and enclosing the perimeter of each cabinet or module shall be summed and then totaled to determine total area. The perimeter of measurable area shall not include embellishments such as pole covers, framing, decorative roofing, etc., provided that there is not written advertising copy on such embellishments.
  - b. If the sign is composed of more than two sign cabinets or modules, the area enclosing the entire perimeter of all cabinets and/or modules within a single, continuous geometric figure shall be the area of the sign. Pole covers and other embellishments shall not be included in the area of measurement if they do not bear advertising copy.
  - c. Only one face of a double-faced sign will be used to figure the total square footage.
- (2) *Wall signs.* The area shall be within a single, continuous perimeter composed of any straight line geometric figure which encloses the extreme limits of the advertising message. If the sign is composed of individual letters or symbols using the wall as the background with no added decoration, the total sign area shall be calculated by measuring the area within the perimeter of each symbol or letter. The combined areas of the individual figures shall be considered the total sign area.

*Snipe sign* means a temporary sign or poster affixed to a tree, fence, etc. (such as a garage sale sign), less than four square feet.

*Special event or public announcement signs* mean a sign or notice posted to announce public information concerning special events, bazaars, rallies, or other similar activities. These special events, bazaars, rallies, or other similar activities must be sponsored by charitable, religious, philanthropic, educational or civic institutions.

*State-maintained highway* means any state-owned or state-maintained roadway within the city or its extraterritorial jurisdiction.

*Strip center (shopping center)* means a building plot developed or ultimately to be developed with three or more stores, shops, or commercial enterprises, and which has shared parking facilities or access.

*Subdivision identification sign* means a freestanding or wall sign identifying a recognized subdivision, condominium complex, or residential development.

*Temporary changeable advertisement* means a promotional placard such as, but not limited to signs between pumps at service stations. Such signs are constructed of cardboard, wallboard, plastic, or metal, not to exceed six square feet in size and not intended for long term use. A portable sign shall not be considered a temporary sign.

*Under-canopy sign* means a sign suspended beneath a canopy, ceiling, roof, or marquee.

*Use* means the purpose for which a building, lot, sign, or structure is intended, designed, occupied, or maintained.

*Wall sign* means a sign attached parallel to and extending not more than 12 inches from the wall of a building. This definition includes painted, individual letter, and cabinet signs, and signs on a mansard.

*Window sign* means a sign installed inside a window and intended to be viewed from the outside, made of wood, paper, paint, or vinyl and not illuminated.

*Zoning district* means A (agricultural-open space), R-1, R-2, (single-family residential), R-3, R-4 (multifamily residential), B-1, B-2, B-3 (commercial district), I (industrial), M (medical district), and PD (planned development). Also see “district.”

(Ord. No. 1361-4-05, 4-5-2005; Ord. No. 1463-8-07, 8-7-2007; Ord. No. 1649-10-13, § 2, 10-1-2013; Ord. No. 1662-3-14, § 2, 3-4-2014)

Cross reference(s)—Definitions generally, § 1-2.

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#### **Sec. 78-4. Signs prohibited.**

The following types of signs are prohibited in all districts:

- (1) Abandoned signs.
- (2) Banners, except allowed in sections 78-98 and 78-100.

- (3) Signs imitating or resembling official traffic or government signs or signals.
- (4) Snipe signs or signs attached to trees, utility poles, public benches, or streetlights.
- (5) Signs placed on vehicles or trailers which are parked or located for the primary purpose of displaying the sign. This does not apply to signs or lettering on buses, taxis, or vehicles operating during the normal course of business. Vehicles or trailers must have a current license and inspection. Also see section 78-77(6) for approval of motor vehicles.
- (6) Off-premises signs except as allowed in subsection (10)a and b of this section.
- (7) Portable and trailer signs.
- (8) Signs on public rights-of-way, as follows:
  - a. With the passage of the ordinance creating this chapter, it shall be unlawful to place a sign upon a public street, public sidewalk, public alley, public right-of-way, public curb or other public improvement in any public street or grounds, on any public bridge or part of same or utility pole, or on any public building or structure of any kind belonging to the city, or in any public place or on any public improvement unless express consent therefore shall have been first granted by the city manager. However, coin-operated devices used to display and vend newspapers may be so placed, so long as they are not placed to impede vehicular or pedestrian traffic. This subsection (8)a does not apply to public property leased for private business purposes.
  - b. Any unlawful sign found within a public right-of-way of a public street, public sidewalk, or public alley shall be seized and the removal thereof is authorized. The authority having jurisdiction, police officer and the department of inspection services are authorized to impound any unauthorized signs found on a public street, public sidewalk, or public alley and transport or cause the same to be transported to a location to be designated by the authority having jurisdiction for storage. The custodian of the storage area shall maintain records of where such signs were located when they were so impounded and the date on which they were so impounded and shall hold the signs in the storage area for a period of not more than 30 days. Any sign so held may be redeemed by the owner thereof upon the payment of a fee to the city through the custodian thereof for hauling the same to storage plus a per-day storage fee for each day the sign is stored. Such fees are on file in the city secretary's office and shall be in addition to and not in lieu of any fine imposed upon such owner for violation of this chapter.

- c. Signs permitted under subsection 78-77(23) are not prohibited by this section.
- (9) Balloon signs except as allowed in sections 78-98 through 78-100.
  - (10) Off-premises signs, both commercial and noncommercial, except on public property, where there has been a determination of the authority having jurisdiction that the display of the sign:
    - a. Promotes a positive image of the city for the attraction of business or tourism; and
    - b. Depicts an accomplishment of an individual or group.

Upon such determination, the city can authorize, upon approved construction plans, a sign to be located on city right-of-way. The sign shall be displayed for a period ordered by the authority having jurisdiction.
  - (11) Off-premises commercial signs and portable signs within the extraterritorial jurisdiction of the city.
  - (12) Signs painted on rooftops.
  - (13) Flashing signs.
  - (14) Any sign which emits sound, odor, or visible matter.
  - (15) Pennants and festoons except as allowed in sections 78-98 through 78-100.
  - (16) Searchlights.
  - (17) Temporary changeable advertisements except as allowed in sections 78-98 through 78-100.
  - (18) Pole banners except as allowed in sections 78-98 through 78-100.
  - (19) Feather signs except as allowed in sections 78-98 through 78-100.

(Ord. No. 1361-4-05, 4-5-2005; Ord. No. 1463-8-07, 8-7-2007; Ord. No. 1649-10-13, § 2, 10-1-2013; Ord. No. 1662-3-14, § 2, 3-4-2014)

...

CHAPTER 78 - SIGNS, ARTICLE IV. - PERMITS, of the Code of Ordinances of the City of Nacogdoches, Texas, is hereby amended, as set hereafter to read as follows:

**Sec. 78-79. - Permit and license fees.**

- (a) Sign permit fees shall be as follows, and all fees shall be continued in full force and effect as the same may be amended from time to time:

Banner signs .... \$10.00

Temporary changeable advertisements .... \$25.00

Pole banners .... \$25.00

Balloon or inflatable signs .... \$25.00

Pennants and festoons .... \$25.00

Feather signs .... \$25.00

- (b) All temporary portable sign permits will expire on December 31, 2007.
- (c) Fees for electronic message center permits will be determined by their valuation and corresponding fee in the current adopted building code.

(Ord. No. 1361-4-05, 4-5-2005; Ord. No. 1388-9-05, 10-1-2005; Ord. No. 1463-8-07, 8-7-2007)

...

CHAPTER 78 – SIGNS, ARTICLE V. - REGULATIONS FOR ON-PREMISES SIGNS BY DISTRICT, of the Code of Ordinances of the City of Nacogdoches, Texas, is hereby amended, as set hereafter to read as follows:

**Sec. 78-98. Signs permitted in B-1, B-3, and "M" zoning districts.**

Signs are allowed as follows in B-1, B-3, historic and "M" zoning districts:

- (1) All signs as permitted in sections 78-96 and 78-97.
- (2) For the historic district-downtown historic district, see article VI of this chapter.
- (3) One freestanding sign shall be allowed subject to the requirements set forth in table 2 in section 78-101.
- (4) Wall signage for each occupancy shall not exceed one and one-half square feet in sign area for each linear foot of that occupancy's building frontage on each street frontage up to a maximum of 300 square feet.

- (5) Where an occupancy is on a corner or has more than one street frontage, one additional freestanding sign will be allowed on the additional frontage, not to exceed the size allowed in section 78-101.
- (6) Strip centers and malls may place additional freestanding signs with a minimum 200 feet of separation on two acres or larger or have multiple signs on a single freestanding sign subject to the requirements set forth in table 1 in section 78-101.
- (7) Signage on freestanding gas station canopies shall not exceed 30 total square feet in area. The lettering and logo shall not be more than two feet in height. This signage shall not be computed in the number of allowable freestanding or wall signs.
- (8) On-premises banner signs and may be used only during business or activity opening, or special promotions, subject to the following:
  - a. Banners must be mounted on a building face. All four corners and at least three sides of the banner must be secured to the building.
  - b. Banners must be maintained in a good condition. Torn, frayed, or tattered banners must be removed.
  - c. Each occupancy is allowed one banner per each building face that is visible from the right-of-way. There may be no more than one banner mounted on each building face at any given time.
  - d. All banners must be placed at least 12 feet from the back of the curb, or property line, whichever is greater.
  - e. Permits must be obtained before the placement of banners.
  - f. Each occupancy may obtain eight banner permits per year, for a period of 30 days for each permit.
  - g. The total area of banner signage allowed at each occupancy is based on table 1 below:

Table 1

Frontage (Feet)	Max Area (Square Feet)
0—100	25
101—200	50
201—300	75
301—400	100
401—500	125

- (9) Only one under-canopy sign per elevation not to exceed 40 percent of the total elevation area shall be allowed.
- (10) Awning signs not more than 30 percent of the surface area of the awning.
- (11) Temporary changeable advertisements may be used, subject to the following:
- a. Permits must be obtained before the placement of temporary changeable advertisements
  - b. Each occupancy may display no more than one temporary changeable advertisement at the same time.
  - c. Each occupancy may obtain two temporary changeable advertisements per year, and each permit is valid for six months.
  - d. All temporary changeable advertisements must be at least 12 feet from the back of the curb or property line, whichever is greater.
  - e. All temporary changeable advertisements must be securely fastened to a permanent structure such as a building, a privately owned light pole, a gas pump, etc. No signs may be attached to public utility poles or public street lights.
- (12) Pole banners may be used, subject to the following regulations:
- a. Limited to not more than two pole banners on any pole.
  - b. Limited to no more than 24 total square feet of banners per pole.
  - c. Minimum height of 14 feet as measured from adjacent grade to the bottom of the pole banner.
  - d. Maximum height of 20 feet to the top of the pole banner.
  - e. Pole banners shall be maintained in good repair, should they become tattered or torn, they shall be replaced or removed.
  - f. Pole banners shall not be illuminated, except for indirect lighting associated with the main lamp of the pole to which it is mounted.
  - g. Pole banners shall be placed on privately owned poles within the interior of the property, and may not be placed on utility poles or street light poles.

- h. Spacing shall be no closer than 80 feet between pole banners.
  - i. The number of banners shall not exceed one per 50 vehicle parking spaces.
  - j. Such pole banners shall be allowed in addition to site signage otherwise allowed by this article.
  - k. Permits must be obtained before the placement of pole banners.
  - l. Permits must be obtained once a year or each time the pole banners are changed, whichever is sooner.
  - m. Fees for pole banner permits shall be based on the overall pole banner package, not on a per-banner basis.
  - n. The following types of pole banners shall be allowed:
    - i. Pole banners on perimeter of private property.
    - ii. Pole banners may be installed along the periphery within 12 feet of property lines fronting public or private streets.
    - iii. Pole banners on the interior of the property.
    - iv. Pole banners within the interior of the parking lot, and may advertise products and services on the site.
- (13) Balloon or inflatable signs may be used, subject to the following regulations:
- a. The following specific types of balloon or inflatable signs are allowed to be permitted:
    - i. Lighter than air devices. Anchorage for devices of this type must be adequate to keep the device in the desired location with the anchorage device remaining stationary.
    - ii. Air filled devices. No device of this type may be filled with any explosive or flammable gas.
    - iii. Air powered devices. This type of device must be located in a place so as to not interfere with any vehicles or pedestrians or enter onto public or other private property if the air supply fails.
  - b. The following regulations apply to all such balloon or inflatable signs:

- i. No device shall be tethered or anchored in or on public right-of-way.
  - ii. No device shall be tethered or anchored so that it may blow into or onto a public right-of-way.
  - iii. No device shall be placed closer than 12 feet from the back of the curb, or property line, whichever is greater.
  - iv. No device shall be placed on public property without the written consent of the governing agency.
  - v. The tethering or anchorage shall be such that if part of the tethering or anchorage becomes unattached, the remaining anchorage or tethering will prevent the device from interfering with vehicles or pedestrians or enter onto public or private property.
  - vi. No device shall be located so that it interferes with or removes the use of the required parking of an occupancy.
  - vii. The device shall be displayed for no more than 18 consecutive hours in any 24-hour period and for no more than ten consecutive days.
- c. Permits must be obtained prior to the placement of balloon or inflatable signs.
  - d. Each occupancy may obtain one balloon or inflatable sign permit per year.
  - e. Each permit will be valid for ten days.
- (14) Pennants and festoons may be used, subject to the following regulations:
- a. Pennants and festoons may only be strung from buildings or privately owned poles.
  - b. No devices may be strung from poles located on the public right-of-way.
  - c. No such devices may be nearer to the ground than 14 feet.
  - d. No such devices may be attached to any temporary pole or structure.
  - e. Any device missing ten percent or more of the flags, by the determination of the authority having jurisdiction, must be removed or replaced.
  - f. All pennants and festoons must be permitted prior to their placement.

- g. Permits must be obtained once per year for each occupancy or each time new pennants or festoons are installed, whichever is sooner.
- h. Fees for pennant and festoon permits shall be based on the overall pennant and/or festoon package, not on a per pennant and/or festoon basis.

(15) Feather signs may be used, subject to the following regulations:

- a. Securely attached to the ground by an approved mounting system designed for its specific purpose and to ensure the safety of the sign and citizens.
- b. Shall not be so located in an area so as to create an obstruction that would create a visual obstruction/traffic hazard to motorists. It may not be located on the public right of way.
- c. Maximum area of 20 square feet.
- d. Maximum height of 12 feet measured from ground to top of the sign.
- e. Shall be maintained in good repair, and should the sign become tattered or torn, it shall be replaced or removed.
- f. Shall not be illuminated.
- g. Spacing shall be no closer than fifty (50) feet between feather signs.
- h. Permits must be obtained before the placement of feather signs.
- i. Each permit will be valid for thirty (30) days.
- j. Each occupancy may obtain no more than (4) feather sign permits per year.
- j.k. Shall not be located in the historic district-downtown historic district.

(Ord. No. 1361-4-05, 4-5-2005; Ord. No. 1587-2-12, 2-7-2012)

### SECTION III

**Severability.** If any word, article, phrase, paragraph, sentence, clause, or provision of this Ordinance shall be held to be invalid or unconstitutional, such holding shall in no way affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end provisions of this Ordinance are declared to be severable.

**SECTION IV**

**Continuation.** All provisions of Chapter 78 of the Code of Ordinances existing prior to the date of passage of this Ordinance remain in full force and effect.

**SECTION V**

**Repeal.** This Ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Nacogdoches, and this Ordinance shall not operate to repeal or affect any such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with provisions of this Ordinance, in which such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

**SECTION VI**

**Effective Date.** This Ordinance shall take effect ten (10) days from its passage and publication as may be required by governing law.

**SECTION VII**

**Proper Notice & Open Meeting.** It is hereby officially found and determined the meeting at which this Ordinance was passed was open to the public as required and public notice of time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

**SECTION VIII**

**Official Public Records.** The City Secretary is hereby authorized and instructed to file a signed and sealed copy of this Ordinance in and among the records of the City of Nacogdoches.

**PASSED AND APPROVED** this the \_\_\_\_ day of \_\_\_\_\_, 2024, by a vote of \_\_\_\_ (eyes) to \_\_\_\_ (nays) of the City Council of the City of Nacogdoches.

**ATTEST:**

**CITY OF NACOGDOCHES**

\_\_\_\_\_  
Rhonda Lewis, City Secretary

BY: \_\_\_\_\_  
Randy Johnson, Mayor

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Jerry Baker, City Attorney

\_\_\_\_\_  
Juan Pollette, Interim City Planner

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**PRESENTER:** Nathan Dietrich, Planning Consultant

**ITEM/SUBJECT: Public Hearing:** Consider a recommendation to the City Council for an ordinance amending Chapter 46 - "Health and Sanitation", Article III. - "Smoking Pollution Control", and Chapter 118 - "Zoning", Article I - "In General", Article III. - "District Regulations", and Article IV. - "Supplementary District Regulations", to regulate the use of 'Retail tobacco/vapor/smoke Store'.

**OVERVIEW:** Staff has reviewed the potential for regulating smoke and vape shops through zoning. The proposal allows this land use by right in certain districts, while in others, it would only be permitted through a Special Use Permit (SUP). Additionally, the proposal includes a 1,000-foot distancing requirement from sensitive uses such as schools, hospitals, churches, daycares, and other smoke or vape shops.

The regulation of smoke and vape shops is framed as a public health and safety initiative. These establishments sell products that can have significant health impacts on both users and those exposed to secondhand smoke or vapor. Implementing zoning and operational restrictions ensures that these shops meet strict standards regarding the sale, distribution, and promotion of tobacco and vaping products.

In addition to protecting public health, regulating these businesses helps prevent the spread of counterfeit or harmful products in the market. It allows local authorities to monitor compliance with health and safety standards, ensuring product quality and hygiene. By establishing this regulatory framework, the City can mitigate health risks, limit exposure to harmful substances, and promote responsible sales and consumption practices within the community.

In reviewing how other cities regulate this land use, staff found a clear trend of imposing stricter controls on smoke and vape shops. Many cities have designated specific areas where these establishments are permitted, often requiring a Special Use Permit (SUP) for their operation. Historically, these businesses were treated as typical retail operations with minimal restrictions. However, as shown in the supporting documentation, most cities are now imposing stricter limitations on their location.

Many jurisdictions are steering smoke and vape shops toward industrial zones or areas that are less frequented by general retail shoppers. Additionally, cities are increasingly implementing distance requirements between smoke and vape shops to prevent a high concentration of these businesses in one area. These changes reflect a growing recognition of the need to regulate these establishments more stringently for public health and safety reasons.

Section 46-101 (Definitions)

**Add:**

Retail tobacco/vapor/smoke store means a retail store utilized primarily for the sale of: (1) any organic or synthetic products intended, designed, or marketed for the purpose of smoking, including tobacco, plants, herbs, or similar substances; (2) electronic smoking devices; and/or (3) any paraphernalia, equipment, or accessories intended, designed, or marketed for the purpose of smoking. Grocery stores, department stores, or convenience stores in which the sale of tobacco/vapor/smoke products, paraphernalia, and accessories are ancillary sales are not included in this definition.

Smoking means inhaling, exhaling, or burning of any organic or synthetic products, including tobacco, plants, herbs, or similar substances in any manner or any form. This term also includes the use of an electronic smoking device which creates a vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this chapter, including, but not limited to, pipes, bong, hookahs, and similar devices for holding burning material.

Section 118-1 “Definitions”

**Add:**

Retail tobacco/vapor/smoke store has the same meaning as stated in chapter 46, section 46-101 of this Code.

Section 118-273 “Land use schedule”

**Add:**

AG	R-1	R-2	R-3	R-1	Permitted Use P= Permitted A= Accessory Use S= Specific Use Permit	B-1	B-2	B-3	MD	I-1	I-2
					Retail Tobacco/Vapor/ Smoke Store*	S	S	S		P	P

Section 118-326 “Retail tobacco/vapor/smoke store”

- a) A retail tobacco/vapor/smoke store may not be located within 1000 feet of a church/place of worship, school, public park, or hospital, or another retail tobacco/vape/smoke store.
- b) Measurement of distance as required in [Section 118-326](#) shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a retail tobacco/vapor/smoke store is located, to the nearest property line of the premises of a church/place of worship, school, public park, hospital, or other retail tobacco/vape/smoke store.

**STAFF REVIEW:**

Staff recommends approval of the health and safety and zoning ordinance amendment as outlined above. Staff supports these evolving trends and recommends adopting similar measures to manage the location and impact of smoke and vape shops within the city.

**CITY CONTACT:** Nathan Dietrich  
Third-Party Planning Consultant  
dietrichn@nactx.us

**ATTACHMENTS:** 1. Survey of other City Ordinances  
2. Proposed Ordinance\_46 and 118\_Smoke Shops

**City of Nacogdoches:**

***Sec. 46-101. - Definitions.***

*Electronic smoking device.* Any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, electronic cigar, electronic pipe, or electronic cigarillo, electronic hookah or under any other product name or descriptor.

*Retail electronic smoking device store* means a retail store utilized primarily for the sale of electronic smoking devices and accessories and in which the sale of other products is merely incidental.

*Retail tobacco store* means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

*Smoking* means inhaling, exhaling, or burning of any tobacco product or similar substance in any manner or any form. "Smoking" also includes the use of an electronic smoking device which creates a vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this chapter.

**\* No current zoning regulations specific to "Retail electronic smoking device store" or "Retail tobacco store"**

**City of Garland:**

SMOKE SHOP: (x) A commercial establishment to which the public is admitted or invited which: (i) as its principal business purpose, offers for sale, distribution or exchange, for any form of consideration, any items, instruments, devices, equipment, accessories, or products that are intended, designed or marketed for use in the smoking or inhaling of any substance, including but not limited to tobacco, salts, incense, marijuana, hashish, hashish oil, cocaine or other controlled substances as defined in the Texas Health and Safety Code; and (ii) holds itself out, taking into account its business operations, its general inventory, and its commercial promotions whether on or off-premise, as encouraging or promoting the use of cannabis, illegal or controlled substances, or on which controlled substances are sold, marketed, or displayed even if marked as being sold for “novelty” or not for human consumption purposes. This definition does not include, and categorically excludes, commercial establishments that derive more than seventy-five percent of their revenue from the sale of the following tobacco products contained in the original manufacturer package: cigarettes, cigars, pipe tobacco, snuff, or chewing tobacco.

**\* “Smoke Shop” SUP required and limited to Industrial District**

**City of San Antonio:**

means a retail store utilized primarily for the sale of tobacco products, smoking implements, or smoking accessories for on-premises consumption and in which the sale of other products is merely incidental, which shall include but not be limited to cigar bars and humidors.

*Smoking* means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form.

**Sec. 35-377. - Head Shops.**

(a) Spacing. Notwithstanding any other provisions of this chapter, no head shop shall be established or maintained within one thousand (1,000) feet of any of the following uses:

- (1) Property which is temporarily or permanently zoned residential.
- (2) Churches.
- (3) Hospitals.
- (4) Community centers.
- (5) Museums.
- (6) Parks.
- (7) Schools.

(b) Measurement of Spacing. Measurement shall be made in a straight line from the nearest boundary of property so zoned to the nearest part of the building in which such use is made, if the same commercial activity occupies an entire building; provided, that the case of a building

which is divided into separate rental or ownership spaces devoted to different uses or enterprises, measurement shall be made to such space or unit of the building in which such use is made.

(c) Registration and Amortization of Nonconforming Uses. Any properties devoted to such use which are so located due to zoning, rezoning, or annexation may be registered as nonconforming uses at the department of planning and development services within sixty (60) days from the date of becoming nonconforming with this chapter, by the owners or any other interested party and upon such registration, such use may thereafter be continued for a period not to exceed three (3) years. After termination of the three-year period, such operation and use must cease.

Head shop. Any retail establishment having a substantial or significant portion of its stock in trade in or which has as its main purpose the offering for sale paraphernalia or items designed or marketed for use with illegal cannabis or drugs.

**\* “Retail tobacco store” permitted in several non-residential zoning districts**

**\* “Head Shops” require SUP for non-residential districts**

#### **City of Abilene:**

*Electronic cigarette* means any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substance, and the use or inhalation which simulates the smoking of a tobacco cigarette, pipe or cigars. "Electronic cigarette" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, electronic hookah, or under any other similar product name or descriptor. The term electronic cigarette does not include any asthma inhaler or other device that may be specifically approved by United States U.S. Food and Drug Administration as a nicotine delivery device.

*Retail tobacco store* means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental. For purposes of this division, other products that are merely incidental means not exceeding ten (10) percent of gross sales. Sales of incidental products shall not include the sale of alcohol regardless of percentage of total gross sales.

*Smoking* means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, or plant in any manner or in any form.

**HEAD SHOP:** Any retail establishment open to the public that presents, displays, or offers for sale paraphernalia, items, equipment, or products commonly used, intended to be used, or commonly known to be used, for the ingestion, inhalation, preparation, or injection of illegal substances, to include any device which has been fabricated, constructed, altered, adjusted, or marked especially for use in the smoking or ingestion of marijuana, hashish, cocaine, methamphetamine, any other "controlled

substance," "controlled substance analogue," "synthetic controlled substance," or substance or chemical that mimics the effect of THC such as synthetic cannabinoids or other controlled substances, or any other substance that violates local, State, or Federal law, and is adapted to that purpose by virtue of a distinctive feature or combination of features associated with drug paraphernalia, notwithstanding that it might also be possible to use the device for some other purpose.

#### Section 2.4.3.3 All Other Uses With Specific Requirements

- (a) Specific Requirements. The City has established standards for certain land uses that shall apply to such uses regardless of the zoning district in which they are developed, unless otherwise stated within the standards.

...

#### (28) HEAD SHOP:

- (a) All structures housing a head shop (as defined in Chapter 5 of this LDC) shall be located as follows:

- (1) At least six hundred feet (600') from the property boundary line of any lot in a College University zoning district;
- (2) At least six hundred feet (600') from the property boundary line of any residentially zoned lot or any lot used for church, park, or hospital purposes;
- (3) At least one thousand feet (1,000') of another structure housing a head shop; and
- (4) At least two thousand five hundred feet (2,500') from any lot used for school purposes.

Measurements are to be in a straight line in all directions from the structure housing the head shop to the nearest property line on any lot in the College-University zoning district, any residentially zoned district, any lot used for church, school, or hospital purposes, any park, or any structure housing a head shop.

- (b) The measurements for a structure shall be taken from the furthest point that a structure extends in any direction, including overhanging roofs and all other projections or portions of said structure.
- (c) Should a head shop be located in conjunction with other buildings in a manner where the head shop is clearly separated from other portions of the structure, (for example, a head shop store in a shopping center) the head shop's measurements shall be taken from the boundaries of the space in which the store is housed or confined (not the entire shopping center, motel, or structure).
- (d) Should a head shop be located in conjunction with other buildings in a manner where the store is situated above the ground level of a multi-story structure and is clearly separate from other activities within the structure (for example, an head shop store on an upper level of

an office tower or hotel), the head shop's measurements shall be taken from the entry to that portion of the structure housing the store, thence to the nearest point of egress (elevator or stairs), thence to the nearest ground floor exit, thence in a straight line to the nearest point on any lot in a residential district or a College University district, or any lot or tract used for church, school, hospital or park purposes, and any structure housing a head shop.

(e) Each applicant for a head shop must submit a Site Plan setting out the dimension and locations for such store. The applicant shall sign a certified and notarized statement attached to the Site Plan that the proposed head shop store complies with the requirements set forth herein above. It shall be the duty of the applicant to prepare the Site Plan and to assure compliance with the distance requirements.

(f) Amortization: A head shop in operation prior to the effective date of this ordinance which does not conform to the regulations pertaining to head shops shall be considered to be a nonconforming use that may continue for four (4) months from the effective date of this ordinance.

**\* “Head Shops” permitted in Heavy Commercial, Light Industrial, and Heavy Industrial Districts**

**City of Tyler:**

Tobacco/Vape/Smoke Store - A commercial establishment specializing in the retail sale of tobacco, cigarettes, cigars, vapes, paraphernalia and associated items, including the small scale blending of tobaccos. A grocery store or similar retail use that sells tobacco and vape products, paraphernalia and associated items as an ancillary sale is not included in this definition. (Ord. No. 0-2023-115; 12/13/23)

**Sec. 10-77. Tobacco/Vape/Smoke Stores**

a) Location Requirements

1. Tobacco/vape/smoke stores as defined by this code shall be at least 300 feet from a public or private elementary or secondary school, City park, child care or day care center, hospital or place of worship, measured in a direct line from the property line of the place of business to the property line of a public or private elementary or secondary school, City park, child care or day care center, hospital or place of worship.

2. Tobacco/vape/smoke stores as defined by this code shall be at least 1,000 feet from another tobacco/vape/smoke store measured in a direct line from the property line of each and every applicable place of business. (Ord. No. 0-2023-115; 12/13/23)

**\* “Tobacco/Vape/Smoke Stores” permitted in the 2 Planned Mixed Use Districts and the Planned Commercial Development District. Placement in the Light Commercial District requires SUP**

**City of Longview:**

*Smoke or smoking.* Means and includes the carrying or holding of a lighted pipe, cigar or cigarette of any kind, or any other lighted smoking equipment or device, and the lighting, emitting or exhaling the smoke of a pipe, cigar or cigarette of any kind.

*Tobacco.* Any tobacco, cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco, which may be utilized for smoking, chewing, inhalation or other means of ingestion or absorption.

*Tobacco shop.* Any commercial establishment that derives more than fifty percent (50%) of its annual gross sales receipts from the sale of tobacco and tobacco accessories.

**\* No current zoning regulations specific to “Tobacco shop”**

**City of Lufkin:**

*E-cigarette.* Any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or under any other product name or descriptor.

*Smoking.* Inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form.

“Smoking” also includes the use of an e-cigarette which creates a vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this division.

**\* “Candy, Cigars, Tobacco (Retail Only)” permitted as a secondary use in Restrictive Professional Office District, and allowed by right in Neighborhood Retail, Local Business, Central Business, Commercial, Light Manufacturing, and Heavy Manufacturing Districts**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF NACOGDOCHES, TEXAS, AMENDING CHAPTER 46 – “HEALTH AND SANITATION”, ARTICLE III. – “SMOKING POLLUTION CONTROL”, AND CHAPTER 118 – “ZONING”, ARTICLE I – “IN GENERAL”, ARTICLE III. – “DISTRICT REGULATIONS”, AND ARTICLE IV. – “SUPPLEMENTARY DISTRICT REGULATIONS”, OF THE CODE OF ORDINANCES OF THE CITY OF NACOGDOCHES, TEXAS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A CONTINUATION CLAUSE; PROVIDING A REPEAL CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**RECITALS:**

**WHEREAS**, the City of Nacogdoches is authorized under Article II, §22 its Charter to promulgate regulations for health and sanitation; and

**WHEREAS**, the City of Nacogdoches is further authorized under Chapter 211 of the Texas Local Government Code to adopt zoning regulations for the purpose of promoting the public health, safety, morals, or general welfare, and protecting and preserving places and areas of historical, cultural, or architectural significance; and

**WHEREAS**, the City Council of the City of Nacogdoches has adopted ordinances for the purpose of promoting health, safety, and the general welfare of the City, with reasonable consideration of the character of each zoning district, its suitability for particular uses, and with a view of conserving the value of buildings and encouraging the most appropriate use of land throughout the City; and

**WHEREAS**, the City Council of the City of Nacogdoches has also adopted ordinances in order to promote public health by decreasing exposure to secondhand smoke and creating smoke-free environments; and

**WHEREAS**, in order to further these objectives, the City Council has determined the need to amend certain portions of these ordinances as set forth herein;

**NOW, THEREFORE BE IT ORDAINED BY THE CITY OF NACOGDOCHES:**

**SECTION I**

All above premises are hereby found to be true and correct legislative and factual findings.

**SECTION II**

CHAPTER 46 – “HEALTH AND SANITATION”, ARTICLE III – “SMOKING POLLUTION CONTROL” of the Code of Ordinances of the City of Nacogdoches, Texas, is hereby amended, as set hereafter to read as follows:

**Sec. 46-101. Definitions.**

The words, terms, and phrases used in this article shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Terms not defined herein shall have the meaning assigned to them in the City of Nacogdoches Building and Zoning Codes and Ordinances.

*Business* means any sole proprietorship, partnership, joint venture, corporation, or other business entity formed for nonprofit or profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

*Electronic smoking device.* Any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, electronic cigar, electronic pipe, or electronic cigarillo, electronic hookah or under any other product name or descriptor.

*Employee* means any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a nonprofit entity.

*Employer* means any person, partnership, corporation, including a municipal corporation, or nonprofit entity who employs the services of one or more individual persons.

*Enclosed area* means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passageways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, office landscaping, or similar structures.

*Fraternal organization* means a nonprofit organization that:

- a. Is chartered by a national organization;
- b. Is tax exempt under section 501(C)(8), (10), or (19) of the Internal Revenue Code;
- c. Operates under a lodge system with a representative form of government; and is organized for the exclusive benefit of the members of the organization and their dependents.

*Night club or dance hall* means an establishment operated as a place of entertainment, characterized by any of the following as a principal use of the establishment:

- a. Live, recorded or televised entertainment, including, but not limited to performances by magicians, musicians or comedians;
- b. Dancing; or
- c. Any combination of a. and b.

*Outdoor venue* means city property where seating is provided for spectators by city or its agents.

*Place of employment* means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including but not limited to work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias, and hallways. A private residence used as a permissible home occupation is not considered a place of employment for the purposes of this article unless it is used as a child care, bed and breakfast or health care facility.

*Private residence* means any household unit or special unit type including but not limited to single-family detached and attached dwellings, two-family dwellings, apartments, condominiums, manufactured homes, or other residential dwelling units.

*Private club where liquor by the drink is served* means any establishment that serves liquor by the drink for on premises consumption. This shall include all porch, patio, and outside areas prohibiting unobstructed public access.

*Public place* means any enclosed area to which the public is invited or in which the public is allowed, including but not limited to banks, educational facilities, health facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, tattoo parlors, retail service establishments, retail stores, theaters, and waiting rooms. A private residence is not a "public place."

*Restaurant* means any coffee shop, cafeteria, sandwich stand, private or public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities. This shall include all porch, patio and outside seating areas.

~~*Retail electronic smoking device store* means a retail store utilized primarily for the sale of electronic smoking devices and accessories and in which the sale of other products is merely incidental.~~

~~*Retail tobacco/vapor/smoke store* means a retail store utilized primarily for the sale of: (1) any organic or synthetic products intended, designed, or marketed for the purpose of smoking, including tobacco, plants, herbs, or similar substances; tobacco products (2) electronic smoking devices; and/or (3) any and paraphernalia, equipment, or accessories intended, designed, or marketed for the purpose of smoking. Grocery stores, department stores, or convenience stores in which the sale of tobacco/vapor/smoke products, paraphernalia, and accessories are ancillary sales are not included in this definition. and in which the sale of other products is merely incidental.~~

*Service line* means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

*Smoking* means inhaling, exhaling, or burning of any organic or synthetic products, including tobacco product, plants, herbs, or similar substances in any manner or any form. This term "Smoking" also includes the use of an electronic smoking device which creates a vapor, in any manner or in any form, or the use of any oral smoking device for

the purpose of circumventing the prohibition of smoking in this chapter, including, but not limited to, pipes, bongs, hookahs, and similar devices for holding burning material.

*Sports arena* means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

(Ord. No. 1489-4-08, 4-15-2008; Ord. No. 1793-03-19 , § II, 3-5-2019)

...

CHAPTER 118 – “ZONING”, ARTICLE I – “IN GENERAL” of the Code of Ordinances of the City of Nacogdoches, Texas, is hereby amended, as set hereafter to read as follows:

**Sec. 118-1. Definitions.**

(a) *Word interpretations.* Interpretations of certain words used in this chapter shall be as follows:

- (1) All words used in the present tense shall include the future.
- (2) All words in the singular number include the plural number, and all words in the plural number include the singular number.
- (3) The term "structure" includes the word "building," and the term "dwelling" includes the terms "residence" and "place of habitation."
- (4) The term "person" includes corporation, copartnership, association, and individual.
- (5) The term "shall" is mandatory and not discretionary.

(b) *Undefined terms.* Terms not defined in this section shall have the meanings assigned to them in the city building codes. Terms not defined in this section or in the building codes shall have the customary meaning assigned to them.

(c) *Words and terms defined.* The definitions in this subsection supplement, restrict, and define the meaning and intent of the use regulations as set forth in this chapter. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Accessory apartment* means an accessory dwelling for the use and occupancy by any person employed on the premises on a full-time basis for domestic or medical help or family members to the second degree of consanguinity and affinity. Such dwelling shall not have separate utility services or meters. This may also include an accessory dwelling located in a commercial or industrial district for the use of any person employed by the business or property owner to provide management, maintenance or security for the property.

*Accessory use* means a structure or use that:

- (1) Is clearly incidental to and customarily found in connection with a principal building or use.
- (2) Is subordinate to and serves a principal building or a principal use; is subordinate in area, extent, or purpose to the principal building or principal use served.
- (3) Is located on the same lot as the principal building or use served.

*Accessory use (residential)* means a subordinate use which is detached from the main building and used for purposes customarily incidental to the residential occupancy of the main building and not involving the conduct of a business or the sale of a service.

Accessory buildings include but are not limited to an automobile storage garage, laundry room, garden shelter, hobby room and mechanical room.

*Airport or landing field* means a landing facility for fixed wing aircraft containing a minimum of 60 acres.

*All-weather surface* means a hard smooth paved surface of either hot-mixed asphaltic concrete (HMAC) or Portland cement concrete (PCC) and the appropriate base material, meeting the following minimum specifications:

- (1) Hot-mixed asphaltic concrete:
  - a. Surface: 1.5 inches of type D or type C material.
  - b. Base: six inches of compacted iron ore gravel or the equivalent flexible base, or four inches of compacted hot sand asphaltic base.
- (2) Portland cement concrete:
  - a. Surface: five inches of class A, 3,000 psi concrete, reinforced with WWF 6 × 6, W 2.9 - 2.9.
  - b. Base: four inches of compacted granular material.

Material shall conform to city and state department of transportation specifications. Other possible types of paved surfaces will be considered on a case-by-case basis by the city's planning and engineering departments.

*Amusement, commercial (indoor)* means an amusement enterprise wholly enclosed in a building, including but not limited to a bowling alley, bingo parlor or amusement arcade, but not including a billiard parlor or pool hall.

*Amusement, commercial (outdoor)* means any amusement enterprise offering entertainment or games of skill to the general public for a fee or charge wherein any portion of the activity takes place in the open, including but not limited to a golf driving range, archery range, and miniature golf course.

*Animal hospital or clinic* means a facility for the treatment or care of domestic animals, which includes a veterinarian's office, and may include overnight stays, but does not include outside pens.

*Animal pound.* See *Animal hospital or clinic* with outside pens.

*Antique shop* means an establishment offering for sale articles such as glass, china, furniture or similar furnishing and decorations which have value and significance as result of age, design or sentiment; and when all such items displayed or offered for sale are housed within a building and there is no exterior display except the usual sign or advertising.

*Apartment* means a dwelling unit in a multiple-family dwelling or apartment house arranged, designed or occupied as a place of residence by a single family. See *Multifamily; (apartments)*.

*Area of lot* means the square-foot area of a lot within the bounding property lines and exclusive of dedicated streets or alleys.

*Artificial lot* means an area within a platted lot, for the purpose of satisfying the requirements of this chapter, that is delineated on the building site plan and the landscape plan and approved by the city planner.

*Arts school or studio* means a school for instruction and practice of the performing, visual or martial arts.

*Banks and financial institutions* means activities and institutions for the extension of credit and the custody, loan or exchange of money.

*Bed and breakfast establishment* means a private single-family residence in which lodging for one or more nights and breakfast is provided by the resident owner for compensation.

*Billiard parlor or pool hall* means a facility for the playing of billiards and pool. Food service may be allowed as an ancillary use.

*Block* means an area enclosed by streets, or if such word is used as a term of measurement, it shall mean the distance along a side of a street between two intersecting streets, or if the street is of a dead-end type, a block shall be considered to be measured between the nearest street and the end of such dead-end street.

*Board* means the board of adjustment as provided for in division 3 of article II of this chapter.

*Boardinghouse or roominghouse* means a building, other than a hotel or multiple-family dwelling, where lodging is provided for five or more persons for compensation, where meals may or may not be served and where facilities for food preparation are not provided in the individual rooms. Where meals are served, they shall be served only to the residents of the boardinghouse.

*Building* means any structure designed, built or intended for the shelter or enclosure of persons, animals, chattels or movable property of any kind or for an accessory use. When separated by an absolute fire separation, each portion of such structure so separated shall be deemed a separate building. This definition includes structures wholly or partly enclosed with an exterior wall.

*Building line* means a line established, in general, parallel to the front property line, over which no part of a building shall project, except as otherwise provided in this chapter.

*Building and landscape materials and lumber sales (outside sales)* means a facility for the sale of home, lawn and garden supplies and construction materials such as brick, lumber and other similar materials. The facility may include outside sales.

*Cabinet and woodwork shop (custom)* means a shop for the repair or creation of individual items of furniture and wooden home furnishings on a custom basis, not a factory, planing mill or similar woodworking plant.

*Carnival or circus (temporary)* means a temporary traveling show or exhibition usually housed in tents, and which has no permanent structure or installation.

*Carwash* means a facility or area for the cleaning or steam cleaning, washing, polishing or waxing of passenger vehicles by machine or hand-operated facilities. A carwash may be a single unit, multiple single washing units, or a tunnel type which can wash several vehicles in tandem.

*Cemetery* means a land use intended to be used for the burial of the dead and dedicated for cemetery purposes, including columbariums, crematories, mausoleums, and mortuaries when operated in conjunction with and within the boundaries of such cemetery.

*Chemical and allied products* includes the manufacturing of industrial inorganic and organic chemicals, plastics materials, and synthetic resins, synthetic rubber, synthetic and other manmade fibers; drugs; soap, detergents, cleaning preparations, perfumes, and other toilet preparations; paints, varnishes, lacquers, enamels, and allied products; gum and wood products; agricultural chemicals; and other chemical and allied products.

*Church or place of worship* means a facility or area for people to gather together for public worship, religious training, or other religious activities including a temple, mosque, synagogue or other structure, together with its customary accessory structures and uses, including a parsonage or rectory. This does not include home meetings or other religious activities conducted in a privately occupied residence.

*City council* means the official governing body of the City of Nacogdoches.

*Club, private* means a clubroom or suite of rooms or a building available to restricted membership for meetings, dining and entertainment. Such facilities may include a private tennis court, swimming pool or similar recreation facilities, none of which are available to the general public.

*College or university* means an institution of higher learning beyond the level of a secondary school.

*Community center (private)* means:

- (1) A building or group of rooms designed and used as an integral part of a residential or apartment project by the tenants of such a project for a place of meeting, recreation or social activity and under the management and unified control of the operators of the project.
- (2) A private nonprofit community center operated as a boys' or girls' club or similar use. A private community center shall not be operated as a place of public meetings, or as a business.

*Community center (public)* means a building and grounds owned and operated by a governmental body for the social, recreational, health or welfare of the surrounding community.

*Convenience store* means any retail establishment offering for sale prepackaged food products, household items, and other goods commonly associated with such and having a gross floor area of less than 7,500 square feet.

*Convent or monastery* means the living quarters or dwelling units for a religious order or for the congregation of persons under religious vows.

*Contractor or maintenance yard* means an open storage yard for supplies and operational equipment, including buildings, but not constituting a junkyard, wrecking yard or salvage yard.

*Country club (private membership)* means an area of 20 acres or more containing a golf course and a clubhouse and available only to a private specific membership. Such a club may contain as adjunct facilities a private club and dining room, swimming pool, tennis courts and similar recreation facilities.

*Coverage* means the percent of a lot area which is covered by a roof, floor or other structure and is not open to the sky. Roof eaves to the extent of two feet, and ordinary projections from the building not exceeding 12 inches, shall not be counted in computing coverage.

*Custom sewing and millinery* means custom making of items of apparel and millinery, by a seamstress, but not involving a factory.

*Day care* means a facility or area used regularly to provide daytime care, training, education, custody, treatment or supervision to more than four children, adults or elderly in other than a family setting for less than 24 hours a day, whether for compensation or not. This definition includes preschools, private kindergartens, nurseries and other similar uses not listed elsewhere in this chapter.

*Density* means as follows:

- (1) *Residential density* means the relationship of dwelling units or rooms to the area of the lot or tract upon which a residential structure is located or erected, and is expressed in "units per acre."
- (2) *Nonresidential density* means the ratio of the area of the building to the area of the site. See *Floor area ratio (FAR)*.

*Dwelling unit* means a building or portion of a building which is arranged, occupied or intended to be occupied as a single living quarters and includes facilities for food preparation and sleeping.

*Eating place with drive-in or curb service* means an establishment offering food for sale to customers in automobiles and wherein the food for sale is to customers in automobiles and wherein the food service is to the automobile.

*Eating place without drive-in or curb service* means any eating establishment, cafeteria, restaurant or inn where food service is offered to the customers not in automobiles.

*Emergency ambulance service* means a facility for the operation and dispatch of emergency medical vehicles. Typically this operation is ancillary to a hospital or a fire station, but it may also be a primary use on a property.

*Escort agency* means a person or business association that furnishes, offers to furnish or advertises to furnish escorts as one of its primary business purposes for fee, tip or other consideration.

*Fabricated metal products* includes the manufacturing of ordnance and accessories; machinery, equipment and supplies; transportation equipment; and other fabricated metal products.

*Fairground* means a specific facility that hosts special indoor and outdoor events including exhibits or competitions of agricultural products, livestock, machinery, etc.; a large exhibition or show of products from various countries; an exhibition or sale of fancywork or other items for the benefit of some cause; or a gathering of buyers or sellers of some product or service.

*Family* means any number of individuals living together as a single housekeeping unit, in which not more than two individuals are unrelated by blood, marriage or adoption.

*Family home* and *family group home* means a community-based residential home licensed by the state department of mental health and mental retardation providing food and shelter, personal guidance, care, rehabilitation services, or supervision. Family homes shall have a maximum of six clients plus two staff members residing in a house. Family group homes shall have a minimum of seven and a maximum of 15 clients plus staff residing in a house.

*Farm, ranch, garden or orchard* means an area of three acres or more which is used for growing of usual farm products, vegetables, fruits, trees and grain for the raising thereon of the usual farm poultry and farm animals such as horses, cattle and sheep, including a private stable and also including the necessary accessory uses for raising, treating, and storing products raised on the premises, but not including the commercial feeding of offal or garbage to swine or other animals and not including any type of agriculture or husbandry specifically prohibited by city ordinance or law.

*Farmers' market* means the retail sale of farm products by individual vendors either within a building or outside. Items sold may include fruits, vegetables, herbs, spices, edible seeds, nuts, live plants, flowers and honey. The sale of new and used household goods, personal effects, tools, artwork, small household appliances and similar merchandise are not included.

*Feed store, retail (livestock, no mill)* means an establishment for the sale of grain, prepared feed and forage for pets, livestock and fowl, but not involving the grinding, mixing or commercial compounding of such items.

*Flea market* means a building or open area in which stalls or sales areas are set aside and rented, or otherwise provided, and which are intended for the sale of articles that are either homemade, homegrown, hand-crafted, old, obsolete, or antique and may include the retail selling of goods by businesses or individuals who are generally engaged in retail trade. This does not include garage sales.

*Floor area* means the total square-foot area of all floors in the building measured to the outside faces of exterior walls or to the line of an omitted wall, whichever includes the largest area.

*Floor area ratio (FAR)* means the ratio between the total square feet of floor area in the building to the total square feet of land in the lot or tract; e.g., "2:1" means that the building contains twice the amount of area as there is in the lot.

*Foster home* means a facility or area providing full-time parental care for six or more unrelated minor children for which compensation or fee is received in return for such services. This must comply with statutory licensing requirements.

*Fraternity/sorority house* means any building occupied and maintained by a social association of college students, or where organization-sponsored functions are regularly held.

*Garage or estate sale:* means a sale for the purpose of offering clothing, household furniture or appliances belonging to the residents may be conducted as home occupation provided that no such sale may be held on any lot or premise more often than twice in each calendar year, and not to exceed three days during each sale.

*Garden shop and plant sales (display or greenhouse)* means an enclosed or open area for the retail sale of plants and gardening products, including fertilizers, soil and gardening implements.

*Golf course (public or private)* means a golf course owned or controlled publicly or privately. This includes such uses as a clubhouse, food service, retail, and other customary accessory uses.

*Golf driving range* means a facility for the organized practice of golf techniques. It may include a practice green for putting, a clubhouse and other minor ancillary uses.

*Government facility* means a facility for public purposes, owned or operated by the city, county, state or federal government. These typically include city hall, courthouse, police and fire stations, public library or museum.

*Grain mill products* includes the manufacturing of flour and other grain mill products, feeds for animals and fowl, cereal preparations, rice milling, blending and preparing flour, and wet corn milling.

*Guesthouse (detached)* means a secondary structure on a lot or tract containing dwelling accommodations but excluding kitchen facilities and separate utility services or meters and intended for the temporary occupancy by guests and not rented or used for permanent occupancy.

*Halfway house (criminal)* means a facility for the housing, rehabilitation, and training of persons on probation or parole from correctional institutions, or other persons found guilty of criminal offenses.

*Health club or studio* means a wholly enclosed facility for fitness training and practice.

*Height* means the vertical distance from the average grade of the finish ground level at the center of all walls to the highest finished roof surface for flat roofs; to the deck line of mansard roofs; and to the average height between eaves and the ridge for gable, hip and

gambrel roofs. In measuring the height of a building, the following structures shall be excluded: chimneys, cooling towers, elevator penthouses, tanks, water towers, radio and television towers, ornamental cupolas, domes or spires, and parapet walls not exceeding four feet in height.

*Home occupation* means an occupation carried on in the home by a member of the occupant's family, being incidental to the primary occupancy of the home as a dwelling; without the display or advertising of any commodity or service for sale on the premises; without the employment of any persons other than members of the immediate family; without the use of any sign, lighting or display; without the use of other than domestic or household equipment or appliances; and the conduct of which does not generate noise, odor, fumes, vibration, additional vehicle traffic or any other condition visible, obnoxious or detrimental to abutting or adjacent properties.

*Hospice* means a facility for the terminally ill, where patients are under the supervision of a doctor, but undergo limited curative treatment, and which is licensed by the state.

*Hospital (chronic care)* means an institution where those persons suffering from generally permanent types of illnesses, injury, deformity, deficiency or age are given care and treatment on a prolonged or permanent basis and which is licensed by the state.

*Hospital (general acute care)* means an institution where sick or injured patients are given medical or surgical treatment intended to restore them to health and an active life, and which is licensed by the state.

*Hotel or motel* means a building or group of buildings designed and occupied as a temporary abiding place of individuals. To be classified as a hotel or motel, an establishment shall contain a minimum of 20 individual guestrooms or units and shall furnish the customary hotel services such as linen, maid service, telephone, use and upkeep of furniture, and the accommodations shall not be designed as permanent dwelling units.

*Household appliance and equipment repair* means a shop for the repair of household and home equipment, such as electrical appliances, lawn mowers, tools, and similar items, where all such items are stored within a building or a storage area surrounded by a solid fence, wall or screen.

*Ice or roller skating rink* means a facility for the practice of ice or roller skating. Accessory uses may include food service and other indoor amusements, contained entirely within the primary structure.

*Industrialized housing* means a residential structure that is designed for the use and occupancy of one or more families, that is constructed according to the rules of the state department of labor and standards in one or more modules, or constructed using one or more modular components built at a location other than the permanent residential site, and that is designed to be used as a permanent residential structure when the modules or modular components are transported to the permanent residential site and are erected or installed on a permanent foundation. The term includes the plumbing, heating, air conditioning, and electrical systems.

*Laundry or dry cleaning, self-service*, means an establishment providing facilities for washing or dry cleaning garments and similar items and where the customer may personally supervise and handle the cleaning operation.

*Legal height* means the maximum height of a building imposed by the Federal Aviation Administration for the airport, this chapter, the building code, or any other legal ordinance or code.

*Library, art gallery or museum (public)* means any institution for the loan or display of books, objects of art or science which is sponsored by a public or responsible quasipublic agency and which institution is open and available to the general public.

*Livestock auction pens or sheds* means a facility or area for the auction of livestock. Accessory uses may include but are not limited to feed pens, stalls, and outside pens or runs.

*Lot* means a platted parcel of land intended to be separately owned, developed, and otherwise used as a unit.

*Lot, corner*, means a lot situated at the intersection of two dedicated streets and having frontage along both streets extending from the intersection.

*Lot, double frontage*, means a lot having frontage on two or more dedicated streets other than a corner lot.

*Lot lines* means the property or lease lines bounding a lot or tract.

*Lot line, interior*, means a lot line delineating the division between two contiguous lots on the interior of a block and not adjacent to a street.

*Lot of record* means a lot which is part of a subdivision plat which has been recorded in the office of the county clerk or a tract of land described by metes and bounds, the description of which is recorded in the office of the county clerk.

*Lot width* means the width of a lot at the required front yard line or at the building line if such is established at a greater distance from the street than the required front yard line.

*Lumber and wood products manufacturing* includes logging camps and contractors; sawmills and planing mills; and the manufacturing of millwork, veneer, plywood, prefabricated structural wood products, wood furniture; and other lumber and wood products.

*Main building* means the building on a lot which is occupied by the primary use.

*Manufactured home* means a structure, constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems.

*Manufactured home park* means a unified development of manufactured home sites, plots, or stands as arranged on a large tract under single ownership, meeting the area and

setback requirements of this chapter, and designed to accommodate manufactured homes for permanent duration.

*Meat products processing or manufacturing* includes meat, poultry, and small game packing and the manufacturing of sausages and other prepared meat products, but not including the slaughtering of animals or poultry.

*Microbrewery* means a business which:

- (1) Operates under a manufacturer's license, as described in V.T.C.A., Alcoholic Beverage Code, ch. 62, issued by the Texas Alcoholic Beverage Commission ("T.A.B.C.");
- (2) May operate, but is not required to operate under a brewer's permit as described in V.T.C.A., Alcoholic Beverage Code, ch. 12, issued by T.A.B.C.;
- (3) Has a total maximum production per year of beer, malt liquor and ale of not more than 15,000 barrels (or 465,000 standard gallons); and
- (4) Does not produce or generate any generally obnoxious odors.

*Mobile home* means a structure that was constructed before June 15, 1976, or one constructed after this date that does not meet the rules of the United States Department of Housing and Urban Development, transportable in one or more sections which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems.

*Mobile home park* means a unified development of mobile home sites, plots or stands as arranged on a large tract under single ownership, meeting the area and setback requirements of this chapter, and designed to accommodate mobile homes for a permanent duration.

*Multifamily (apartments)* means any building or portion thereof which is designed, built, rented, leased or let to be occupied as three or more dwelling units or apartments or which is occupied as a home or residence of three or more families.

*Nightclub* or *dancehall* means an establishment operated as a place of entertainment, characterized by any of the following as a principal use of the establishment:

- (1) Live, recorded or televised entertainment, including but not limited to performances by magicians, musicians or comedians;
- (2) Dancing; or
- (3) Any combination of subsections (1) and (2) of this definition.

This does not include theaters, auditoriums and stadiums with fixed row seating; private clubs; bars; teen clubs; or any establishment defined elsewhere in this chapter as an adult entertainment establishment.

*Nursing and convalescent homes* means an establishment which furnishes, in single or multiple facilities, food and shelter to five or more persons who are not related by blood, marriage, or adoption to the owner or proprietor of the establishment and, in addition, provides minor treatment under the direction and supervision of a physician, or services which meet some need beyond the basic provision of food, shelter and laundry.

*Office (general and professional)* means a facility for the regular transaction of business, wherein services are performed involving predominantly administrative, professional or clerical operations not specifically listed elsewhere in this chapter.

*Open space* means an area on a lot that is open and unobstructed to the sky except for the ordinary projections of cornices and eaves, and is exclusive of driveways or parking areas.

*Open storage (no enclosure)* means storage in the open of vehicles, machinery or any equipment or commodity where permitted as a primary use of land and accessory storage in the open of commercial and industrial products where such storage is not enclosed by a fence, wall or building.

*Open storage with visual screen* means the permitted storage of any equipment or commodity in an open area which is enclosed by a fence or wall, as defined in this chapter, or surrounded by a building so as to create an effective visual screening of the storage from the adjacent property.

*Orphanage* means an institution for the care of orphans or other abandoned children.

*Paper and allied products manufacturing* includes the manufacture of pulp, paper, paperboard, converted paper and paperboard products, paperboard containers and boxes, building paper and building board.

*Pawnshop* means a building or premises, other than a bank, savings and loan or mortgage banking company, used for the business of lending money on the security of pledged goods, or for the business of the purchase of tangible personal property on condition that it may be redeemed or repurchased by the seller for a certain price within a certain period of time, and licensed by the state to conduct such a business.

*Pet shop* means a place for the display and sale of small animals and birds as pets, such as dogs, cats, parakeets or canaries, but not involving the boarding or treating of dogs or similar pets.

*Petroleum refining and related industries* includes the refining of petroleum and the manufacturing of paving and roofing materials; lubricating oils and greases and other petroleum and coal products.

*Piercing studio* means any establishment that performs any type of body piercing.

*Pool house (detached)* means a secondary structure on a lot with a swimming pool, excluding separate utility services or meters, and intended for temporary recreation use and not used as a permanent occupancy.

*Poultry hatchery* means a commercial facility for the hatching and raising of domestic fowl, including a research facility for such activity.

*Primary metal products manufacturing* includes blast furnaces, steel works and the rolling and finishing of ferrous metals; iron and steel foundries; primary smelting and refining of nonferrous metals and alloys, rolling, drawing and extruding of nonferrous metals; and nonferrous foundries.

*Professional, scientific and controlling instruments; photographic and optical goods; watches and clocks manufacturing* includes the manufacturing of engineering, laboratory and scientific and research instruments and associated equipment; instruments for measuring, controlling, and indicating physical characteristics; optical instruments and lenses; surgical, medical, and dental instruments and supplies; ophthalmic goods; photographic equipment and supplies; and watches, clocks, clockwork-operated devices and parts.

*Psychiatric hospital or institution* means a facility or area for providing health services primarily for inpatient medical care for alcoholic, narcotic, or psychopathic patients, and which may include related facilities such as laboratories, outpatient departments, training facilities, central service facilities, and staff offices that are an integral part of the facilities. This includes a substance abuse and rehabilitation facility.

*Racetrack* means an indoor or outdoor facility for the recreational or competitive racing of horses, canines, or motor vehicles, including the necessary accessory uses such as retail sales, automobile maintenance, veterinarian supplies and shops, exercise areas and stables.

*Radio or television transmission station (commercial)* means a facility used for the production and transmission of programming by radio or television to the general public. Included are commercial, religious, educational and other stations.

*Radio, television, microwave or cellular communication tower (commercial)* means structures supporting antennae for transmitting or receiving any portion of the radio spectrum, but excluding noncommercial antennae installations for home use of radio or television.

*Radio tower (noncommercial)* means a radio tower located on a residential property which is for home use, only, and which is not taller than 15 feet above the maximum building height allowed in the district.

*Recreation club or area (private)* means a building, park or recreation area, the use of which is restricted to private membership such as by a church, neighborhood association, fraternal or social organization, and which may contain the normal active and passive facilities as provided in a park or playground, or public recreation facility.

*Recreation facility (public)* means a facility or area sponsored by a public entity and devoted to sports, entertainment, games of skill or recreations to the general public. This may include swimming pools, tennis courts, playgrounds, community clubhouses, park facilities and other similar uses.

*Retail tobacco/vapor/smoke store has the same meaning as stated in chapter 46, section 46-101 of this Code.*

*Retirement home* means a residential facility principally designed for persons 55 years of age or older. Dwelling units may include full kitchen facilities, and recreational, social,

nursing or other services may be available. This does not include a nursing or convalescent home.

*Rubber and miscellaneous plastics manufacturing* includes the reclaiming of rubber and the manufacture of tires and innertubes; rubber footwear; plastic products; and other fabricated rubber products.

*Satellite dish* means the dish and its structural elements that is commonly used in the reception of television signals from orbiting satellites.

*School, K—12, public or private*, means a school and customary accessory uses under the sponsorship of a public or religious agency having a curriculum generally equivalent to public, elementary or secondary schools, but not including private, trade or commercial schools.

*School, vocational* means a business operating for profit and offering instruction and training in a service or art, such as a secretarial school, barber college, commercial art school; or offering instruction and training in a trade such as welding, bricklaying, machinery operation and other similar manual trades. This does not include truck or heavy equipment driving schools.

*Service station* means any facility where gasoline and other petroleum products are sold and/or light maintenance activities such as engine tuneups, lubrication, minor repairs, and carburetor cleaning are conducted. Service stations shall not include facilities where heavy automobile maintenance activities such as engine overhauls, automobile painting, and body or fender work are conducted.

*Single-family dwelling (attached)* means a dwelling unit on a separately owned lot which is joined to another dwelling unit on one or more sides by a party wall or abutting separate walls and occupied by not more than one family.

*Single-family dwelling (detached)* means a detached building having a single dwelling unit and occupied by not more than one family.

*Single-family dwelling (zero lot line)* means a dwelling unit on a separately owned lot on which one wall of the principal dwelling is located within one foot of the side property line of an adjacent residential lot, and the other side yard meets or exceeds the minimum required side yard for the district.

*Stable, commercial*, means a facility housing horses or mules which are boarded or rented to the public or any stable other than a private stable; but not including a sales barn, auction, or similar trading activity.

*Stable, private*, means a facility or area for keeping horses, mules or other domestic animals for the private use of the property owner.

*Stone, clay, glass and concrete products manufacturing* includes the manufacturing of glass; flat glass and glassware; cement; structural clay products; pottery and related products; concrete, gypsum and plaster products; cut stone and stone products; and abrasive, asbestos and other nonmetallic mineral products.

*Studio (art, drama, speech, or dance)* means a building or rooms in a building used for the instructing, coaching or counseling in drama, speech, dance or similar personal skills or arts.

*Tattoo salon* means an establishment or facility in which tattooing is performed.

*Teen club* means a nightclub that caters to teenage patrons.

*Tennis court (lighted)* means an outside tennis court with elevated lighting for nighttime play.

*Tennis court (no lights)* means an outside tennis court without elevated lighting for nighttime play.

*Textile mill products manufacturing* includes the manufacturing of woven fabrics, knit goods, rugs, carpets, yarns, and threads, and other textile goods; and the dyeing and finishing of textiles.

*Theater, movie or live (enclosed)* means a facility with fixed seats for the viewing of movies or live presentations of musicians or other performing artists.

*Tobacco products manufacturing* includes the manufacturing of cigarettes, cigars, chewing and smoking tobacco, snuff; tobacco stemming and redrying.

*Travel trailer/RV park* means any lot upon which two or more travel trailer or other recreational vehicle sites are located, established or maintained for occupancy by recreational vehicles of the general public as temporary living quarters for recreation or vacation purposes. The area is intended for use on a shortterm basis by campers, vacationers, and travelers.

*Truck or heavy equipment driving school* means a type of vocational school where education is provided behind the wheel of trucks or heavy equipment.

*Two-family dwelling* means a detached building having two dwelling units and occupied by not more than two families.

*Use, nonresidential,* means any use other than a one- or two-family residence, or a roominghouse or boardinghouse, and their bona fide accessory uses.

*Use, residential,* means a one- or two-family residence, or a roominghouse or boardinghouse, together with bona fide accessory uses.

*Utility facilities (major)* includes such uses as electrical substations, wastewater treatment plants, elevated water storage and water treatment plants.

*Utility lines and transmission* includes local utilities such as electric power, telephone, gas, water, sewer, and air monitoring stations. It also includes inline facilities such as gas regulating stations and water wells or pumping stations; sewage pumping stations; telephone exchange, switching and transmitting equipment; and electrical transmission lines operated by a municipality or a franchised utility company. It does not include major utility facilities.

*Veterinary office (no hospital or clinic)* means a facility for the diagnosis and treatment of animals, without an overnight stay.

*Warehouse/storage (inside)* means a building or group of buildings providing enclosed shelter and protection for commodities stored therein. No open or unenclosed storage shall be classified as a warehouse.

*Wrecking yard, junkyard, salvage yard or reclamation yard* means a yard or building where automobiles, machinery, appliances or other used commodities and equipment are stored, dismantled, and/or offered for sale as whole units or as salvaged parts.

*Yard* means an open space on the lot on which a building is situated and which is open and unobstructed to the sky.

*Yard, front, required*, means a yard facing and abutting a street and extending across the front of the lot between the side lot lines and having a minimum horizontal depth measured from the street equal to the depth of the minimum front yard specified for the district in which the lot is located. The required front yard line represents the line in front of which no building or structure may be erected.

*Yard, rear, required*, means a yard extending across the rear of the lot between side lot lines and having a minimum depth measured from the rear lot line as specified for the district in which the lot is located.

*Yard, side, required*, means a yard located on a lot and extending from the required front yard to the required rear yard and having a minimum width measured from the side lot line as specified for the district in which the lot is located. Any lot line which is not a rear or front line shall be deemed a side lot line.

*Zoning district map* means the official, certified map upon which the boundaries of the various zoning districts are shown and which are an integral part of this chapter and, together with the zoning text in this chapter, make up the zoning ordinance for the city.

*Zoo, zoological park, animal park, or aviary* means an institution which owns and maintains captive wild animals and under the direction of a professional staff, provides its collection with appropriate care and exhibits them in an aesthetic manner to the public on a regularly scheduled basis for the purposes of education, conservation, scientific study and recreation.

(Ord. No. 1130, art. III, 11-3-1998; Ord. No. 1185-12-99, 12-7-1999; Ord. No. 1350-2-04, 2-3-2004; Ord. No. 1351-2-04, 2-3-2004; Ord. No. 1439-10-06, 10-3-2006; Ord. No. 1516-5-09, 5-5-2009; Ord. No. 1535-11-09, § 3, 11-17-2009; Ord. No. 1626-5-13, 5-7-2013; Ord. No. 1708-6-16, § 2, 6-21-2016)

Cross reference(s)—Definitions generally, § 1-2.

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CHAPTER 118 – “ZONING”, ARTICLE III. – “DISTRICT REGULATIONS” of the Code of Ordinances of the City of Nacogdoches, Texas, is hereby amended, as set hereafter to read as follows:

**Sec. 118-273. Land use schedule.**

(a) *Use of land and buildings.* Buildings, structures and land shall be used only in accordance with the uses permitted in the following land use schedule, subject to all other applicable requirements of this chapter. The following symbols are used in the land use schedule:

- (1) The symbol "P" shall mean that the use is permitted as a principal use in that zoning district by right.
- (2) The symbol "S" shall mean that the principal use is permitted in that zoning district only after first obtaining a specific use permit.
- (3) The symbol "A" shall mean that this use is specifically permitted as an accessory use to a principal use in the district. This does not exclude other land uses which are generally considered ancillary to the primary use.
- (4) An asterisk (\*) indicates that the use has special standards or requirements listed in this section, which it must meet in order to be allowed.
- (5) A blank square shall mean that the use is not allowed in that zoning district.
- (6) Italicized words are defined in article IV of this chapter or under section 118-1 containing definitions.

(b) *Organization of land use schedule; category grouping.* Uses are grouped into general categories such as "agriculture" and "residential," and then further organized into subcategories. This organization of land uses is for ease of reference only.

LAND USE SCHEDULE											
(*) Signifies Uses with Special Guidelines ( <i>Italic</i> ) Signifies a Defined Term											
Residential					Permitted Use P=Permitted, A=Accessory Use, S=SUP	Commercial				Industrial	
AG	R-1	R-2	R-3	R-4		B-1	B-2	B-3	MD	I-1	I-2
AGRICULTURAL USES											
P	P	P	P	P	Farm, Ranch, Garden or Orchard		S			P	P
P	P	P	P	P	Farm or Ranch for live stock and Animal Specialties		S			P	P
P					Feed Store and Tack for live Stock - No Mill		P			P	P

S					Livestock Auction Pens or Sheds							P
S					Poultry Hatchery							P
S					Stables (Commercial)							P
					RESIDENTIAL USES							
					Household Units							
P	P	P	P	P	Home Occupation	P	P	P	P			
				P	Multifamily - Apartments	S	P	P	P			
			P	P	Single Family Attached							
P	P	P	P	P	Single Family Detached							
			P	P	Single Family Zero Lot Line							
			P	P	Two Family Dwelling							
A	A	A	P	P	Pool House (Detached)*	P	P	P	P			
					Special Unit Types							
P	P	P	P	P	Industrialized Housing*							
					Manufactured Home							
				S	Manufactured Home Park		S					
					Mobile Home (House Trailer, Camp)							
				S	Mobile Home Park		S					
				S	Travel Trailer/ RV Park	S	S				S	
					Lodging/Group Quarters							
S	S	S	S	P	Bed and Breakfast* - 4 or Less Patrons	P	P	P	P			
				P	Bed and Breakfast* - 5-8 Patrons	S	P	P	P			

				P	Boarding or Rooming House	S	P	P	S		
S	S	S	S	P	Accessory Apartment*	P	P	P	P		
S	S	S	S	P	Convent or Monastery	S	P	P	S		
S				P	Family Group Home	S	P	P	P		
P	P	P	P	P	Family Home	P	P	P	P		
P	P	P	P	P	Foster Home	P	P	P	P		
P	A	A	P	P	Guest House (Detached)	P	P	P	P		
S			S	S	Half-way House - Criminal	S	P	P	S		
					Hotel or Motel	S	P	P	P	P	
S				P	Orphanage	S	P	P	S		
				P	Retirement Home	P	P	P	P		
					AMUSEMENT /RECREATION USES						
					General Recreation						
					Amusement, Commercial - Indoors*		P	P		P	
					Amusement, Commercial - Outdoors		S	S			
					Billiard Parlor or Pool Hall*		P	P		P	
S					Carnival or Circus (Temporary)		S	S		S	S
S	S	S	S	S	Country Club (Private Membership)	S	P	P		P	S
S					Fairground*		P			P	P
P	S	S	S	S	Golf Course (Public or Private)	P	P			P	P
P	S	S	S	P	Golf Driving Range	P	P			P	P
				A	Health Club or Studio	P	P	P	P	P	A
					Ice or Roller Skating Rink*	S	P	P		P	P
					Night Club or Dance Hall*		P	P		P	

S					Race Track		S			P	
S	S	S	S	A	Recreation Club or Area (Private)*		P	P		P	
S	S	S	S	A	Recreation Facility (Public)	P	P	P	P	P	
					Teen Club*	S	P	P			
				A	Tennis Court (Lighted)	S	P	P		P	
A	A	A	A	P	Tennis Court (No Lights)	P	P	P		P	
					Theater - Movie or Live (Enclosed)	S	P	P		P	
S					Zoo, Zoological Park, Animal Park, or Aviary		S				
					Adult Recreation						
					Adult Arcade*						P
					Adult Book Store or Video Store*						P
					Adult Cabaret*						P
					Adult Motel*						P
					Adult Motion Picture Theater*						P
					Adult Theater*						P
					Escort Agency*						P
					Nude Model Studio*						P
					Sexual Encounter Center*						P
					INTITUTIONAL, UTILITY and GOVERNMENTAL USES						
					Government / Utility						
P	P	P	P	P	Government Facility	P	P	P	P	P	P
P				P	Library, Art Gallery or Museum (Public)	P	P	P	P	P	

					Post Office	S	P	P	P	P	
					Postal Distribution Facility		P			P	P
S					Radio or TV Trans. Station (Commercial)	S	P	P	P	P	P
S	S	S	S	S	Radio Tower (Non-Commercial)*	P	P	P	P	P	P
S	S	S	S	S	Radio, TV, Microwave, or Cellular Transmission Tower (Comm.)*	P	P	P	P	P	P
A	A	A	A	A	Satellite Dish*	P	P	P	P	P	P
P	S	S	S	S	Utility Facilities (Major)	S	P	P	P	P	P
P	P	P	P	P	Utility Lines and Transmission	P	P	P	P	P	P
					Schools / Organizations						
P	S	S	S	S	College or University	S	P	P	P	S	S
P	P	P	P	P	Daycare - 3 or less Attendees	P	P	P	P	P	
S	S	S	P	P	Daycare - 4-6 Attendees	P	P	P	P	P	
S			S	S	Daycare Center - 7 or more Attendees	S	P	P	P	P	
S					School - Vocational	S	P	P	P		
P	P	P	P	P	School, K-12 (Public or Private)	P	P	P	P	S	
P	P	P	P	P	Church or Place of Worship	P	P	P	P	P	
S					Club, Private	P	P	P	P	P	S
	S	S	S	P	Community Center - Private	P	P	P	P	P	
P	S	S	P	P	Community Center - Public	P	P	P	P	P	
				S	Fraternity / Sorority House	S	S				
					Lodge or Fraternal Organization	S	P	P	S	P	P
					OFFICE AND PROFESSIONAL						



P				P	Caretaker/Security Quarters	P	P	P	P	A	A
S	S	S	S	S	Cemetery or Mausoleum	P	P	P	P	P	P
					Communications/Electronics Equipment - Installation and Repair	S	P	P		P	
					Conventions, Trade Shows or Exhibits	S	P	P	S	S	
					Exterminator Service	S	P			P	P
					Exterminator Service Storage					P	P
					Household Appliance and Equipment Repair	S	P	P		P	P
					Information Processing		P	P	P	P	
					Laundry/Dry Cleaning - <3,000 s.f. w/ Customer Service		P	P	P	P	
					Laundry/Dry Cleaning - >3,000 s.f.				A	P	P
					Laundry/Dry Cleaning - Drop Off/Pick Up	P	P	P	P	P	
				A	Laundry/Dry Cleaning -Self Service	P	P	P	P	P	
					Locksmith	P	P	P		P	P
					Mailing Service (Private)	P	P	P	P	P	
					Mortuary or Funeral Home		P	P	P	P	P
					Photocopying or Duplicating Services	S	P	P	P	P	P
					Photographic Studio	P	P	P		P	
					Sewing and Millinery (Custom)	P	P	P		P	
					Shoe Repair	P	P	P		P	
					Studio - Art, Drama, Dance, Music - Performing Arts	P	P	P		P	
					Tailor Shop	P	P	P	S	P	
					Tattoo Salon/Piercing Studio	S	S	S	S	P	
					Taxidermist		S	S		P	P

P	P	P	P	P	Temporary Field or Construction Office	P	P	P	P	P	P
					Temporary Retail Use	S	S	S	S	S	
					Travel Agency	P	P	P	P		
					Upholstery Shop or Furniture Repair (non-Auto)		P	P		P	P
					Food and Beverage Services						
					Club (Private)*	S	P	P	S	S	P
					Catering Service	S	P	P	P	P	P
					Eating Place w/ Drive-thru	S	P	S		P	P
					Eating Place w/o Drive-thru	P	P	P	P	P	P
					Food Preparation or Food Service	P	P	P	P	P	P
					Liquor By the Drink*	S	P	P	S	S	P
					Retail						
					Alcohol Sales - Off Premise Consumption	P	P	P		P	P
					Antique Shop	P	P	P		P	
					Art Dealer	P	P	P			
					Art Gallery	P	P	P			
					Bait or Tackle Shop	S	P	P		P	
					Bakery Shop	P	P	P	P	P	
					Bicycle Sales or Repair	P	P	P		P	
					Book or Stationery Shop	P	P	P	P		
					Building Material Sales (Outside Storage)		P			P	P
					Camera or Photographic Supply Shop	P	P	P	P	P	

					Cloth or Fabric Store	S	P	P			
					Clothing Store	P	P	P	P		
					Confectionery Shop	P	P	P	P		
					Consignment Shop	P	P	P		P	
					Convenience Store	P	P	P			
					Department Store		P	P			
					Drapery Shop	S	P	P			
					Drug Store or Pharmacy	P	P	P	P		
					Farmers Market - Outdoor	S	P	P		P	P
					Flea Market - Outdoor	S	P	P		P	P
					Florist Shop	P	P	P	P		
					Furniture Sales - New (Indoor Only)	S	P	P		P	
P					Garden Shop & Plant Sales - Display or Greenhouse	S	P	P		P	P
					Grocery	P	P	P			
					Hardware Store	S	P	P		P	
					Hobby, Handicraft or Art Supplies	P	P	P	P		
					Lawnmower Sales or Repair	S	P	P		P	
					Major Appliance Sales (Indoor)	S	P	P		P	
					Mobile/Manufactured Home Dealer (Sales Only)		S			P	P
					Monument Sales Yard		P	P		P	P
					Optical Shop	P	P	P	P		

					Paint and Wallpaper Store	P	P	P	S	P	
					Pawn Shop*		P			P	
					Pet Shop	S	P	P		P	
					Plumbing Shop (Retail & Wholesale)		P	P		P	P
					Retail or Convenience Store with Gasoline	P	P	P	P	P	P
					<u>Retail Tobacco/Vapor/Smoke Store*</u>	<u>S</u>	<u>S</u>	<u>S</u>		<u>P</u>	<u>P</u>
					Sporting Goods		P	P			
					Swimming Pool Sales & Supply		P	P		P	P
					Used Merchandise - Furniture, Rummage, Second Hand Store (Inside)	S	P	P		P	
					TRANSPORTATION, AUTOMOBILE and MARINE USES & SERVICES						
					Automobile Related						
					Auto Brake, Muffler, Glass, Seat Covers or Tire Sales & Service		P			P	P
					Auto Dealer - Primarily New/Used Autos		P			P	
					Auto Dealer - Primarily Used Autos		P			P	
					Auto Interior Shop		P			P	
					Auto Paint/Body Repair		S			P	P
					Auto Rental		P	P		P	
					Auto Repair - General		P			P	P
					Auto Storage or Auction					P	P

					Auto Supply - Used Parts Store with no On-Site Salvage		P	S		P	P
					Auto Supply Store for New and Rebuilt Parts		P	P		P	
					Auto Wrecker Service		A	A		P	
					Auto/Truck Parts and Accessories		P	P		P	
					Car Wash		P			P	P
					Drag Strip or Commercial Racing						P
					Parking - Accessory to Another Use		A	A	A	A	A
					Parking - Commercial Lot or Garage		P	P	P	P	
					Lube/Oil Change		P			P	P
					Service Station	S	P		P	P	P
					State Vehicle Inspection		P			P	P
					Bus or Truck Related						
					Bus or Truck Parking or Storage		S	S		P	P
					Bus Station and Terminal		S	S		S	
					Truck Stop, Including Gas Sales		P			P	P
					Truck/Heavy Equipment Driving School		S			P	P
					Truck/Recreational Vehicle Sales		S			P	P
					Truck/Trailer Rental		P			P	P
					Trucking Company		S			P	P
					Railroad or Airport Related						
					Airport or Landing Field		S			S	S

					Railroad Freight Depot		S			P	P
					Railroad Passenger Station		P			P	
					Railroad Yard & Shops					P	P
					Vehicle - General						
					Boat Dealer - Sales Only		P			P	
					Boat Repair or Storage		P			P	
					Go Cart Track					S	P
					Motorcycle Sales or Service		P			P	
					Transfer/Storage Terminal		S			P	P
					Vehicle Maintenance - Private		A	A		P	P
					Vehicle Wash - Private		A	A		P	P
					WHOLESALE TRADE and STORAGE USES						
					Wholesale Trade						
					Apparel, Piece Goods, Notions - Wholesale		P	P		P	
					Groceries/Related Products - Wholesale		P	P		P	
					Heavy Machinery Sales					P	P
					Lumber Sales - Wholesale					P	P
					Paper or Paper Products - Wholesale		P	P		P	P
					Petroleum Products Storage & Wholesale					P	P
					Tool or Equipment Rental - Indoor		P	P		P	P
					Tool or Equipment Rental - Outdoor		P	S		P	P
					Storage						

					Contractor or Maintenance Yard		P			P	P
					Hazardous Gases/Chemicals Storage					S	P
					Mini Warehouse	S	S			P	P
					Open Storage (No Enclosure)					P	P
					Open Storage (Screened)		P	S		P	P
					Petroleum Products Storage and Warehouse		S			P	P
					Warehouse/Storage (Inside)		P	P	P	P	P
					Wrecking, Junk, Salvage or Reclamation Yard					S	S
					MANUFACTURING and MINING USES						
					Food-Related Products						
					Animal or Poultry Slaughtering						P
					Bakery Products; Manufacturing					P	P
					Beverage Manufacturing						P
					Bottling or Canning of Soft Drinks & Carbonated Water					P	P
					Bottling Works					P	P
					Canned, Frozen, and Preserved Fruits, Vegetables and Other Foods						P
					Dairy Products - Processing or Manufacturing					P	P
					Fats and Oils Manufacturing or Processing					S	P
					Grain Mill Products; Processing and Manufacturing						P
					Ice Manufacturing					P	P

					Meat Products; Processing or Manufacturing - Not Including Slaughtering					P	P
					Microbrewery		S	S		P	P
					Sugar and Confectionery Products, Manufacturing					P	P
					Sugar Manufacturing						P
					Articles and Equipment						
					Apparel Manufacturing					P	P
					Broom & Brush Manufacturing					P	P
					Cabinet & Woodworking Manufacturing		P			P	P
					Chemical and Allied Products Manuf.						P
S					Concrete or Asphalt Batch Plant - Temp.	S	S			S	P
					Costume Jewelry, Novelties, Buttons & Misc. Notions Mfg.					P	P
					Fabricated Metal Products Manufacturing					S	P
					Fur Dressing & Dying						P
					Jewelry, Silverware & Plateware Mfg.					P	P
					Laboratory - Medical or Dental		P	P	P	P	P
					Laboratory - Scientific Testing		P	P	P	P	P
S					Land Fill (Private or Municipal)						S
					Light Manufacturing/Assembly		S	S		P	P

					Linoleum, Asphalt - Felt Base & Other Hard Surfaced Floor Covering Mfg.						P
					Machine Shop					P	P
					Match Manufacturing						P
					Musical Instruments & Parts Mfg.					P	P
					Paper and Allied Products Manufacturing						P
					Pens, Pencils & Other Office & Artists' Materials Mfg.					P	P
					Printing Publishing and Allied Industries		P	P		P	P
					Professional, Scientific & Controlling Instruments; Photographic & Optical Goods; Watches & Clocks Mfg.					P	P
					Rubber and Misc. Plastics Manufacturing						P
					Salvage and Reclamation (Enclosed)					P	P
					Sign & Advertising Display Manufacturing					P	P
					Textile Mill Product Manufacturing						P
					Tobacco Products Mfg.						P
					Toys, Amusement, Sporting & Athletic Goods Mfg.						P
					Welding Shop					P	P
					Natural Resources						
					Lumber and Wood Products Manufacturing						P
S	S	S	S	S	Oil & Gas Extraction	S	S		S	S	P

S	S	S	S	S	Oil & Gas Field Services	S	S		S	S	P
					Petroleum Refining and Related Industries						P
					Primary Metal Products Manufacturing						P
					Stone, Clay, Glass & Concrete Products Manufacturing						P
S	S	S	S	S	Stone, Sand, Gravel & Mineral Extraction	S	S		S	S	S
					Stone, Sand, Gravel or Earth Sales and Storage					S	P

(Ord. No. 1130, art. III, § 1, 11-3-1998; Ord. No. 1184-12-99, 12-7-1999; Ord. No. 1185-12-99, 12-7-1999; Ord. No. 1204-5-00, 5-16-2000; Ord. No. 1329-9-03 , 9-2-2003; Ord. No. 1350-2-04, 2-3-2004; Ord. No. 1431-8-06, 8-1-2006; Ord. No. 1439-10-06, 10-3-2006; Ord. No. 1516-5-09, 5-5-2009; Ord. No. 1560-10-10, 10-19-2010; Ord. No. 1626-5-13, 5-7-2013; Ord. No. 1676-7-14, 7-15-2014; Ord. No. 1721-10-16 , § 2, 10-18-2016

...

CHAPTER 118 – “ZONING”, ARTICLE IV. – “SUPPLEMENTARY DISTRICT REGULATIONS” of the Code of Ordinances of the City of Nacogdoches, Texas, is hereby amended, as set hereafter to read as follows:

Sec. 118-326. - Retail tobacco/vapor/smoke store.

- a) A retail tobacco/vapor/smoke store may not be located within 1000 feet of a church/place of worship, school, public park, or hospital, or another retail tobacco/vape/smoke store.
- b) Measurement of distance as required in section 118-326 shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a retail tobacco/vapor/smoke store is located, to the nearest property line of the premises of a church/place of worship, school, public park, hospital, or other retail tobacco/vape/smoke store.

**SECTION III**

**Severability.** If any word, article, phrase, paragraph, sentence, clause, or provision of this Ordinance shall be held to be invalid or unconstitutional, such holding shall in no way affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end provisions of this Ordinance are declared to be severable.

**SECTION IV**

**Continuation.** All provisions of Chapters 46 and 118 of the Code of Ordinances existing prior to the date of passage of this Ordinance remain in full force and effect.

**SECTION V**

**Repeal.** This Ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Nacogdoches, and this Ordinance shall not operate to repeal or affect any such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with provisions of this Ordinance, in which such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

**SECTION VI**

**Effective Date.** This Ordinance shall take effect ten (10) days from its passage and publication as may be required by governing law.

**SECTION VII**

**Proper Notice & Open Meeting.** It is hereby officially found and determined the meeting at which this Ordinance was passed was open to the public as required and public notice of time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

**SECTION VIII**

**Official Public Records.** The City Secretary is hereby authorized and instructed to file a signed and sealed copy of this Ordinance in and among the records of the City of Nacogdoches.

**PASSED AND APPROVED** this the \_\_\_\_ day of \_\_\_\_\_, 2024, by a vote of \_\_\_\_ (eyes) to \_\_\_\_ (nays) of the City Council of the City of Nacogdoches.

**ATTEST:**

**CITY OF NACOGDOCHES**

\_\_\_\_\_  
Rhonda Lewis, City Secretary

BY: \_\_\_\_\_  
Randy Johnson, Mayor

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Jerry Baker, City Attorney

\_\_\_\_\_  
Juan Pollette, Interim City Planner

**PRESENTER:** Nathan Dietrich, Planning Consultant

**ITEM/SUBJECT: Public Hearing:** Consider a recommendation to the City Council to amend Chapter 118- “Zoning”, Article II.-“Administration”, Division 1 “Generally”, Sec. 118-141 – “Protest of proposed change in zoning”, to change the word “commission” to City Council.

**OVERVIEW:**

Staff is in the process of assessing city ordinances to ensure they meet current developmental needs, and to recommend innovative, economical, and modern ways to promote smart growth and compatibility in development within the city limits and beyond. In this request, staff observed that the wording in the ordinance causes an undo scheduling hardship for applicants.

The ordinance required the applicant for zoning items that received a protest that it needed to go back to the commission for a 3/4ths vote. However, under TLGC (Texas Local Government Code), in the event of a written protest, it will need the decision of 3/4ths of the governing body, and in this case, that decision maker is the City Council.

**STAFF REVIEW:**

Staff recommend approving the change to Chapter 118-141(b) in removing the reference to the Planning and Zoning Commission and replacing it with the City Council. As described in the TGLC, it shall be the governing body/decision-maker to be able to approve a duly confirmed written protest of a zoning request needing the 3/4th’s approval of all members of the Council.

Chapter 118-141 “Protest of proposed change in zoning”

**Change**

(b) Whenever such a written protest is signed by the owners of 20 percent or more of the area of the lots or land included in such zoning change or of the lots or land immediately adjoining such and within the 200-foot distance, such change in zoning shall not become effective except by a favorable vote of three-fourths of all the members of the ~~commission~~City Council.

**CITY CONTACT:** Nathan Dietrich  
Third-Party Planning Consultant  
[dietrichn@nactx.us](mailto:dietrichn@nactx.us)

**ATTACHMENTS:** 1. 211.006 LGC  
2. Proposed Ordinance\_118-141\_Zoning Protest

**Sec. 211.006. PROCEDURES GOVERNING ADOPTION OF ZONING REGULATIONS AND DISTRICT BOUNDARIES.** (a) The governing body of a municipality wishing to exercise the authority relating to zoning regulations and zoning district boundaries shall establish procedures for adopting and enforcing the regulations and boundaries. A regulation or boundary is not effective until after a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard. Before the 15th day before the date of the hearing, notice of the time and place of the hearing must be published in an official newspaper or a newspaper of general circulation in the municipality.

(a-1) In addition to any notice required by this section or Section [211.007](#), the governing body of a municipality or a zoning commission, as applicable, 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 must:

(1) 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;

(2) contain the time and place of the hearing; and

(3) include the following text in bold 14-point type or larger:

**"THE [MUNICIPALITY NAME] 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."**

(b) In addition to the notice required by Subsection (a), a general-law municipality that does not have a zoning commission shall give notice of a proposed change in a zoning classification to each property owner who would be entitled to notice under Section [211.007](#)(c) if the municipality had a zoning

commission. That notice must be given in the same manner as required for notice to property owners under Section [211.007](#)(c). The governing body may not adopt the proposed change until after the 30th day after the date the notice required by this subsection is given.

(c) If the governing body of a home-rule municipality conducts a hearing under Subsection (a), the governing body may, by a two-thirds vote, prescribe the type of notice to be given of the time and place of the public hearing. Notice requirements prescribed under this subsection are in addition to the publication of notice required by Subsection (a).

(d) If a proposed change to a regulation or boundary is protested in accordance with this subsection, the proposed change must receive, in order to take effect, the affirmative vote of at least three-fourths of all members of the governing body. The protest must be written and signed by the owners of at least 20 percent of either:

(1) the area of the lots or land covered by the proposed change; or

(2) the area of the lots or land immediately adjoining the area covered by the proposed change and extending 200 feet from that area.

(e) In computing the percentage of land area under Subsection (d), the area of streets and alleys shall be included.

(f) The governing body by ordinance may provide that the affirmative vote of at least three-fourths of all its members is required to overrule a recommendation of the municipality's zoning commission that a proposed change to a regulation or boundary be denied.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 52 (S.B. [929](#)), Sec. 1, eff. May 19, 2023.

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF NACOGDOCHES, TEXAS, AMENDING CHAPTER 118 – “ZONING”, ARTICLE II – “ADMINISTRATION”, DIVISION 4 – “AMENDMENT PROCEDURE”, OF THE CODE OF ORDINANCES OF THE CITY OF NACOGDOCHES, TEXAS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A CONTINUATION CLAUSE; PROVIDING A REPEAL CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**RECITALS:**

**WHEREAS**, the City of Nacogdoches is authorized under Chapter 211 of the Texas Local Government Code to adopt zoning regulations for the purpose of promoting the public health, safety, morals, or general welfare, and protecting and preserving places and areas of historical, cultural, or architectural significance; and

**WHEREAS**, the City Council of the City of Nacogdoches has adopted ordinances for the purpose of promoting health, safety, and the general welfare of the City, with reasonable consideration of the character of each zoning district, its suitability for particular uses, and with a view of conserving the value of buildings and encouraging the most appropriate use of land throughout the City; and

**WHEREAS**, in order to further these objectives, the City Council has determined the need to amend certain portions of these ordinances as set forth herein;

**NOW, THEREFORE BE IT ORDAINED BY THE CITY OF NACOGDOCHES:**

**SECTION I**

All above premises are hereby found to be true and correct legislative and factual findings.

**SECTION II**

CHAPTER 118 – “ZONING”, ARTICLE II. – “ADMINISTRATION”, DIVISION 4 – “AMENDMENT PROCEDURE” of the Code of Ordinances of the City of Nacogdoches, Texas, is hereby amended, as set hereafter to read as follows:

**Sec. 118-141. - Protest of proposed change in zoning.**

- (a) Property owners adjacent to and within a distance of 200 feet of a property for which a change in zoning is being considered have the right to file a written protest against the request. The land area of this 200-foot distance includes streets, alleys and other public rights-of-way.
- (b) Whenever such written protest is signed by the owners of 20 percent or more of the area of the lots or land included in such zoning change or of the lots or land immediately adjoining such and within the 200-foot distance, such change in zoning

shall not become effective except by a favorable vote of three-fourths of all the members of the ~~commission~~City Council.

- (c) For purposes of determining representation on such written protest, the written protest of any one owner of land owned by two or more persons shall be presumed to be the protest of all owners.

(Ord. No. 1130, art. VII, § 9, 11-3-1998)

### SECTION III

**Severability.** If any word, article, phrase, paragraph, sentence, clause, or provision of this Ordinance shall be held to be invalid or unconstitutional, such holding shall in no way affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end provisions of this Ordinance are declared to be severable.

### SECTION IV

**Continuation.** All provisions of Chapter 118 of the Code of Ordinances existing prior to the date of passage of this Ordinance remain in full force and effect.

### SECTION V

**Repeal.** This Ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Nacogdoches, and this Ordinance shall not operate to repeal or affect any such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with provisions of this Ordinance, in which such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

### SECTION VI

**Effective Date.** This Ordinance shall take effect ten (10) days from its passage and publication as may be required by governing law.

### SECTION VII

**Proper Notice & Open Meeting.** It is hereby officially found and determined the meeting at which this Ordinance was passed was open to the public as required and public notice of time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

### SECTION VIII

**Official Public Records.** The City Secretary is hereby authorized and instructed to file a signed and sealed copy of this Ordinance in and among the records of the City of Nacogdoches.

**PASSED AND APPROVED** this the \_\_\_\_ day of \_\_\_\_\_, 2024, by a vote of \_\_\_\_ (ayes) to \_\_\_\_ (nays) of the City Council of the City of Nacogdoches.

**ATTEST:**

**CITY OF NACOGDOCHES**

\_\_\_\_\_  
Rhonda Lewis, City Secretary

BY: \_\_\_\_\_  
Randy Johnson, Mayor

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Jerry Baker, City Attorney

\_\_\_\_\_  
Juan Pollette, Interim City Planner

**PRESENTER:** Nathan Dietrich, Planning Consultant

**ITEM/SUBJECT: Public Hearing:** Consider a recommendation to amend Chapter 118 “Zoning”, Article II “Administration”, Division 3 “Board of Adjustment”, of the Code of Ordinances of the City of Nacogdoches, Texas, to clarify Board of Adjustment appeal procedures by revising the number of days to file an appeal and whom may appeal city planner decisions.

**OVERVIEW:** Staff may propose changes to local ordinances in response to Council direction, or to comport with current state or federal law, to address various needs within and around the municipality. On August 22, 2024, members of the Council and Planning and Zoning Commission held a workshop to discuss possible zoning ordinance updates.

This agenda item proposes to amend Chapter 118 “Zoning”, Article II “Administration”, Division 3 “Board of Adjustment” of the local Code of Ordinances to address procedures for Board of Adjustment appeals. Some amendments are intended to provide clarification, while others are intended to align more closely with Texas Local Government Code Sec. 211.010 "Appeal to Board" last amended by the Texas Legislature in 2019 (see [H.B. 2497](#)). Proposed amendments include:

- Appeals are specific to city planner decisions.
- Only certain people may file appeals.
- Appeals must be filed no later than 20 days from the date of the decision.
- Hearings must be conducted no later than 60 days from the filing.

**STAFF REVIEW:**

Staff recommends amendments as proposed in the attached redlined document.

**CITY CONTACT:** Nathan Dietrich  
Third-Party Planning Consultant  
[dietrichn@nactx.us](mailto:dietrichn@nactx.us)

**ATTACHMENTS:** 1. Redlined ordinance amendment  
2. Texas Local Govt Code 211.010 snippet

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF NACOGDOCHES, TEXAS, AMENDING CHAPTER 118 – “ZONING”, ARTICLE II – “ADMINISTRATION”, DIVISION 3. – “BOARD OF ADJUSTMENT”, OF THE CODE OF ORDINANCES OF THE CITY OF NACOGDOCHES, TEXAS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A CONTINUATION CLAUSE; PROVIDING A REPEAL CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

RECITALS:

WHEREAS, the City of Nacogdoches is authorized under Chapter 211 of the Texas Local Government Code to adopt zoning regulations for the purpose of promoting the public health, safety, morals, or general welfare, and protecting and preserving places and areas of historical, cultural, or architectural significance; and

WHEREAS, the City Council of the City of Nacogdoches has adopted ordinances for the purpose of promoting health, safety, and the general welfare of the City, with reasonable consideration of the character of each zoning district, its suitability for particular uses, and with a view of conserving the value of buildings and encouraging the most appropriate use of land throughout the City; and

WHEREAS, in order to further these objectives, the City Council has determined the need to amend certain portions of these ordinances as set forth herein;

NOW, THEREFORE BE IT ORDAINED BY THE CITY OF NACOGDOCHES:

SECTION I

All above premises are hereby found to be true and correct legislative and factual findings.

SECTION II

CHAPTER 118 – “ZONING”, ARTICLE II. – “ADMINISTRATION”, DIVISION 3. – “BOARD OF ADJUSTMENT” of the Code of Ordinances of the City of Nacogdoches, Texas, is hereby amended, as set hereafter to read as follows:

**Sec. 118-100. - Appeal of decisions made by city ~~officers~~planner.**

(a) Appeal of city planner's decision. Appeals to the board of adjustment may be ~~taken by any person aggrieved, or by any officer, department or board of the city affected by any filed concerning a~~ decision of the city planner in the enforcement of this chapter. Such appeal shall be taken within a reasonable time, not to exceed ~~90-20~~ days from the date of the decision, by filing with the city planner ~~and with the board of adjustment~~ a notice of appeal, which shall specify the grounds thereof. The city planner shall forthwith transmit to the board all of the papers constituting the record upon which the action appealed was taken. An appeal may be initiated as follows:

(1) The following persons may appeal to the board of adjustment a decision made by the city planner that is not related to a specific application, address, or project:

(i) a person aggrieved by the decision; or

(ii) any officer, department, board, or bureau of the municipality affected by the decision.

(2) The following persons may appeal to the board of adjustment a decision made by the city planner that is related to a specific application, address, or project:

(i) a person who:

(A) filed the application that is the subject of the decision;

(B) is the owner or representative of the owner of the property that is the subject of the decision; or

(C) is aggrieved by the decision and is the owner of real property within 200 feet of the property that is the subject of the decision; or

(ii) any officer, department, board, or bureau of the municipality affected by the decision.

~~(a)~~(b) Appeal stays city planner ~~and building official~~ action. An appeal from the action of the city planner shall stay all proceedings in furtherance of such action unless the city planner certifies to the board that a stay would, in his opinion, cause imminent peril to life or property. If the city planner shall make and file such certificate, that action shall not be stayed unless by a restraining order which may be granted by the board, or by a court of record, upon application of the party aggrieved by the action of the city planner, and after notice to the city planner.

~~(b)~~(c) Hearing. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and may authorize city staff to do such. The board of adjustment shall decide such appeal within a reasonable time, but no later than 60 days from the filing of the appeal. Upon hearing of such appeal, any interested party may appear in person or by an agent or attorney.

~~(e)~~(d) Powers. In exercising the powers set out in this section, the board of adjustment may, in conformity with the provisions of state law, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination as ought to

be made, and to that end shall have all the powers of the city planner from whose action the appeal is taken.

~~(d)~~(e) *Decision.* Decisions of the board of adjustment shall be as follows:

- (1) *Required vote.* A reversal by the board of any order, requirement, decision, or determination of the city planner against the applicant, and a finding in favor of the applicant by the board, shall require the concurring vote of four members of the board of adjustment.
- (2) *Lapse of order.* Any reversal by the board of adjustment shall lapse after the expiration of 90 days where action by the appellant is not taken pursuant thereto within such period. This subsection shall not apply when the applicant has presented to the board of adjustment a development plan which requires a length of time greater than 90 days, in which event the board of adjustment may grant a greater length of time. In no event, however, shall such time granted exceed two years.

(Ord. No. 1130, art. X, § 4, 11-3-1998)

### SECTION III

**Severability.** If any word, article, phrase, paragraph, sentence, clause, or provision of this Ordinance shall be held to be invalid or unconstitutional, such holding shall in no way affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end provisions of this Ordinance are declared to be severable.

### SECTION IV

**Continuation.** All provisions of Chapter 118 of the Code of Ordinances existing prior to the date of passage of this Ordinance remain in full force and effect.

### SECTION V

**Repeal.** This Ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Nacogdoches, and this Ordinance shall not operate to repeal or affect any such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with provisions of this Ordinance, in which such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

### SECTION VI

**Effective Date.** This Ordinance shall take effect ten (10) days from its passage and publication as may be required by governing law.

**SECTION VII**

**Proper Notice & Open Meeting.** It is hereby officially found and determined the meeting at which this Ordinance was passed was open to the public as required and public notice of time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

**SECTION VIII**

**Official Public Records.** The City Secretary is hereby authorized and instructed to file a signed and sealed copy of this Ordinance in and among the records of the City of Nacogdoches.

**PASSED AND APPROVED** this the \_\_\_\_ day of \_\_\_\_\_, 2024, by a vote of \_\_\_\_ (ayes) to \_\_\_\_ (nays) of the City Council of the City of Nacogdoches.

**ATTEST:**

**CITY OF NACOGDOCHES**

\_\_\_\_\_  
Rhonda Lewis, City Secretary

BY: \_\_\_\_\_  
Randy Johnson, Mayor

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Jerry Baker, City Attorney

\_\_\_\_\_  
Juan Pollette, Interim City Planner

TEXAS LOCAL GOVERNMENT CODE

TITLE 7. REGULATION OF LAND USE, STRUCTURES, BUSINESSES, AND RELATED  
ACTIVITIES

SUBTITLE A. MUNICIPAL REGULATORY AUTHORITY

CHAPTER 211. MUNICIPAL ZONING AUTHORITY

SUBCHAPTER A. GENERAL ZONING REGULATIONS

Sec. 211.010. APPEAL TO BOARD. (a) Except as provided by Subsection (e), any of the following persons may appeal to the board of adjustment a decision made by an administrative official that is not related to a specific application, address, or project:

- (1) a person aggrieved by the decision; or
- (2) any officer, department, board, or bureau of the municipality affected by the decision.

(a-1) Except as provided by Subsection (e), any of the following persons may appeal to the board of adjustment a decision made by an administrative official that is related to a specific application, address, or project:

- (1) a person who:
  - (A) filed the application that is the subject of the decision;
  - (B) is the owner or representative of the owner of the property that is the subject of the decision; or
  - (C) is aggrieved by the decision and is the owner of real property within 200 feet of the property that is the subject of the decision; or
- (2) any officer, department, board, or bureau of the municipality affected by the decision.

(b) The appellant must file with the board and the official from whom the appeal is taken a notice of appeal specifying the grounds for the appeal. The appeal must be filed not later than the 20th day after the date the decision is made. On receiving the notice, the official from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record of the action that is appealed.

(c) An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the board facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case, the proceedings may be stayed only by a restraining order granted by the board or a court of record on application, after notice to the official, if due cause is shown.

(d) The board shall set a reasonable time for the appeal hearing and shall give public notice of the hearing and due notice to the parties in interest. A party may appear at the appeal hearing in person or by agent or attorney. The board shall decide the appeal at the next meeting for which notice can be provided following the hearing and not later than the 60th day after the date the appeal is filed.

(e) A member of the governing body of the municipality who serves on the board of adjustment under Section [211.008](#)(g) may not bring an appeal under this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 363, Sec. 2, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 820 (H.B. [2497](#)), Sec. 2, eff. September 1, 2019.