

ORDINANCE NO. 2021-O-151

AN ORDINANCE OF THE CITY OF ATHENS, TEXAS, AMENDING CHAPTER 22, ARTICLE III, SECTION 22-31 OF THE CITY CODE OF ORDINANCES REGARDING EXPIRATION CRITERIA FOR SPECIFIC USE PERMITS, PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, on the 1st day of November 2021, the Planning and Zoning Commission of the City of Athens, Texas after due notice and hearing did hereby vote to recommend approval of the amendment of the Zoning Ordinance to include expiration criteria for specific use permits.

WHEREAS, on the 8th day of November 2021, the City Council of the City of Athens, Texas after due notice as required by law, held a public hearing for the said amendment to Chapter 22 of the City Code of Ordinances and heard from those opposed to said modification and those in favor of same. After the close of the public hearing, the ordinance amendment was read aloud for the first time as required by Article III, Section 3.11 of the City of Athens Charter.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATHENS, TEXAS

Section 1. The City Council hereby authorizes the amendment of Chapter 22, Article III, Section 22-31 as shown below. For clarity, the text to be amended within the ordinance is shown in highlights.

Sec. 22-31. SUP—Specific use provisions.

- (a) *Specific uses.* The purpose of this overlay district is to allow certain uses within base zoning districts that, under most circumstances, would not be compatible with other permitted uses but with certain conditions and development restrictions may be compatible.

The city council by an affirmative vote may, after public hearing and proper notice (in accordance with the procedures set forth in section 22-10) to all parties affected, and after recommendations from the planning and zoning commission that the uses are in general conformance with the intent of the comprehensive plan and with general objectives of the city, and containing such requirements and safeguards as are necessary to protect adjoining property, authorize certain uses by a specific use provision (SUP). As a zoning action, issuance of an SUP shall only apply to real property (i.e., shall not be attached to any person, business entity, etc.), and shall not be transferred from one property to another (i.e., shall not move if a business operation relocates), and shall not expire without proper zoning action to rescind the SUP (i.e., change the zoning to remove the SUP, with appropriate public notification, public hearing, etc.).

A zoning application for an SUP shall be accompanied by a metes and bounds description and a survey (i.e., drawing) exhibit showing the property for which the SUP is being requested, and by a site plan (see section 22-12) drawn to scale and showing the general arrangement of the project, together with essential requirements such as off-street parking facilities; size, height, construction materials, and locations of buildings and the uses to be allowed; location and construction of signs; means of ingress and egress to public streets; the type of visual screening such as walls, plantings and fences; and the relationship of the intended use to all existing properties and land uses in all directions to a minimum distance of two hundred (200) feet. The city shall make available application forms specifying drawing requirements. The city manager (or his/her designee), planning and zoning

commission or city council may require additional information or drawings (such as building floor plans), operating data and expert evaluation or testimony concerning the location, function and characteristics of any building or use proposed. The site plan shall be reviewed and approved along with the SUP zoning application, and in accordance with section 22-12 of this chapter.

(b) *Specific use provision regulations.*

- (1) In recommending that a specific use provision for the premises under consideration be granted, the city shall determine that such uses are harmonious and adaptable to building structures and uses of abutting property and other property in the vicinity of the premises under consideration, and shall make recommendations as to requirements for the paving of streets, alleys and sidewalks, means of ingress and egress to public streets, provisions for drainage, adequate off-street parking, screening and open space, heights of structures, and compatibility of buildings. In approving a requested SUP, the planning and zoning commission and city council may consider any or all of the following:
 - a. The use is harmonious and compatible with surrounding existing uses or proposed uses;
 - b. The activities requested by the applicant are normally associated with the permitted uses in the base district;
 - c. The nature of the use is reasonable;
 - d. Any negative impact on the surrounding area has been mitigated; and/or
 - e. That any additional conditions specified ensure that the intent of the district purposes are being upheld.
- (2) In granting a specific use provision, the planning and zoning commission and city council may impose conditions which shall be complied with by the owner or grantee before a certificate of occupancy may be issued by the building official, or his/her designee, for use of the building on such property pursuant to such specific use provision and such conditions precedent to the granting of the certificate of occupancy. Any special conditions shall be set forth in writing by the city council prior to issuance of the certificate of occupancy, and shall be incorporated into the amending ordinance establishing the SUP.
- (3) No specific use provision shall be granted unless the applicant, owner and grantee of the specific use provision shall be willing to accept and agree to be bound by and comply with the written requirements or conditions of the specific use provision, as incorporated into the amending ordinance establishing the SUP, and as reviewed by the planning and zoning commission and approved by the city council.
- (4) Every specific use permit granted under these provisions shall be considered as an amendment to the zoning chapter and shall remain applicable to the property so long as all conditions imposed at the time of granting said permit continue to be met and no substantive change in the use of the property occurs. In the event the building, premises, or land use under the specific use permit is voluntarily vacated for a period in excess of 180 days, the use of the same shall thereafter conform to the regulations of the original zoning district of such property unless a new and separate specific use permit is granted for continuation of the same.
- ~~(4)~~(5) A building permit or certificate of occupancy shall be applied for (following site plan approval) and secured within one (1) year from the time of granting the specific use provision, provided however, that the city council may authorize an extension of up to one (1) additional year. After the one-year period (and the extension, if such has been granted by city council) has elapsed, the SUP shall expire SUP's site plan shall be deemed to be expired. The applicant/property owner(s) must then submit a new SUP application site plan for approval prior to any construction or to application for a building permit for the area designated for the original specific use provision. The new site plan must be resubmitted for review and approval in accordance with section 22-12 of this chapter.

~~(5)~~(6) No building, premises, or land used under a specific use provision may be enlarged, modified, structurally altered, or otherwise significantly changed unless an amended specific use provision is granted for such enlargement, modification, structural alteration, or change.

Only minor changes or alterations to the building itself (i.e., those that do not involve the addition of land area covered by the SUP or modification of any special stipulations adopted in the ordinance granting the SUP, either of which must be done using the procedures outlined in section 22-10) may be approved by the city manager, or his/her designee.

~~(6)~~(7) The zoning board of adjustments shall not have jurisdiction to hear, review, reverse, or modify any decision, determination, or ruling with respect to the specific land use designated by any specific use provision.

~~(7)~~(8) When the city council authorizes granting of a specific use provision, the zoning district map shall be amended according to its legend to indicate that the affected area has conditional and limited uses, and said amendment is to indicate the appropriate zoning district for the approved use and prefixed by a "SUP", or "S" designation followed by the identification number assigned to that particular SUP (e.g., S-1, S-2, S-3, and so on). A list of all issued SUPs, showing the uses permitted and any other special stipulations of each SUP, shall be maintained as part of this chapter.

(c) *Use regulations.* Uses allowed by SUP are specified in section 22-32 (use charts).

(d) *Prior SUP ordinances remaining in effect.* Prior to adoption of this chapter, the city council had established various specific use permits (SUPs), some of which are to be continued in full force and effect. The permits or parts of permits approved prior to this chapter, and specified in appendix A-2, shall be carried forth in full force and effect and are the conditions, restrictions, regulations and requirements which apply to the respective specific use provisions shown on the zoning district map as of the effective date of this chapter. The inactive (i.e., use is voluntarily vacated for a period in excess of 180 days or use was never established) permits or parts of permits approved prior to the adoption of this Ordinance shall have one (1) year from the effective date of this Ordinance to establish the approved land use. If the inactive use is not established within this time, the use shall thereafter conform to the regulations of the original zoning district. Each prior SUP ordinance is hereby assigned a unique identification number (e.g., S-1, S-2, S-3, and so on) as shown in appendix A-2, and subsequent SUP ordinances adopted after the effective date of this chapter shall be similarly numbered for identification purposes.

(e) *Exceptions.* In the PD-2 agriculture zoning district — See section 22-30(d)(2)b. (planned developments).

Section 2. Should any clause, phrase, sentence section of this Ordinance be deemed invalid or unconstitutional by a court of competent jurisdiction, said finding shall not affect the remaining clauses, phrases, sentences or sections of this Ordinance.

Section 3. Any ordinance, resolution or order previously passed and/or adopted by the City Council, or any part thereof, if found to be in conflict with the provisions of this Ordinance, shall be resolved in favor of the terms and conditions of this Ordinance, and any prior conflicting ordinance, resolution or order or any part thereof, is hereby repealed to the extent of said conflict.

Section 4. This ordinance shall be and become effective from and after its adoption and publication in accordance with the provisions of the Charter of the City of Athens, Texas.

First reading on the 8th day of November 2021.

PASSED, APPROVED and ADOPTED this the 29th day of **November 2021** at a regular meeting of the City Council of the City of Athens, Texas, with the following record vote:

Toni Clay, Mayor	Aye
Aaron Smith, Mayor Pro Tem	Aye
Robert Gross, Councilmember	Aye
SyTanna Freeman, Councilmember	Aye
Mark Carroll, Councilmember	Aye

Voted in favor of the motion	5
Voted against the motion	0
Motion carried	5-0

Toni Clay, Mayor

ATTEST:

Bonnie Hambrick, City Secretary