

**ORDINANCE NO. 2023-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS, AMENDING THE NEW BRAUNFELS CODE OF ORDINANCES, CHAPTER 144 ZONING SECTION 2.1; SECTION 2.3; SECTION 3.3; SECTION 3.4; SECTION 4.2; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; CONTAINING A SAVINGS CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.**

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***WHEREAS**, Chapter 211 of the Texas Local Government Code empowers a city to enact zoning regulations and provide for their administration, enforcement and amendment; and*

***WHEREAS**, the City Council of the City of New Braunfels, Texas, deems it necessary and desirable to establish zoning regulations to provide for the orderly development of property within the City by governing the use of land in order to promote the public health, safety, morals and general welfare of the residents of the City; and*

***WHEREAS**, the Comprehensive Plan, Envision New Braunfels, has multiple action items supporting updates that improve regulations, including Action Item 1.11: Update policies and codes to achieve development patterns that implement the goals of this plan; and Action Item 3.6: Pro-actively provide a regulatory environment that remains business and resident friendly.*

***WHEREAS**, the City Council has directed that regulations dealing with the use and development of land be reviewed by the Planning Commission to make recommendations concerning improving those regulations; and*

***WHEREAS**, the Planning Commission held a public hearing on April 4, 2023 and recommended approval of the proposed amendments; and*

***WHEREAS**, the City Council held a public hearing on said amendments on April 10, 2023; and*

***WHEREAS**, the City Council hereby finds and determines that regularly updating the code for clarification provides improved customer service and is in the best interest of the citizens of New Braunfels.*

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:**

## SECTION 1

THAT Chapter 144, Zoning, Section 2.1-3, Procedure before city council, are hereby amended with additions as underlined and deletions as stricken:

### 2.1-3. Procedure before city council.

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- (b) Protests. In accordance with the provisions of ~~V.T.C.A.~~ W.T.S.A.C., Local Government Code § 211.006 (commonly referred to as the "20 percent rule" ~~if a protest against such proposed zoning or zoning change has been filed with the planning department, duly signed and acknowledged by the owners of 20 percent or more, either of the area of the land included in such a proposed change or those owners of property immediately adjacent to the subject property and extending 200 feet from, such zoning change shall not become effective except by a three-fourths vote of all the members of the city council. In computing the percentage of land area, the area of streets and alleys shall be included.~~ 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 (City Council). The protest must be written and signed by the owners of at least 20 percent of either: the area of the lots or land covered by the proposed change; or the area of the lots or land immediately adjoining the area covered by the proposed change and extending 200 feet from that area.

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(Ord. No. 2012-49, § 1(Exh. A), 9-10-12; Ord. No. 2013-35, § 1, 6-10-13; Ord. No. 2018-21, § 2, 3-26-18)

## SECTION 2

THAT Chapter 144, Zoning, Section 2.3 – Nonconforming uses and structures, are hereby amended with additions as underlined and deletions as stricken:

The lawful use of any building, structure or land existing at the time of the enactment of this chapter may be continued although such use does not conform with the provisions of this chapter. The right to continue such nonconforming uses shall be subject to regulations prohibiting the creation of a nuisance and shall terminate when inappropriate use of the premises produces a condition which constitutes a nuisance. The right of nonconforming uses to continue shall be subject to such regulations as to the maintenance of the premises and conditions of operations and shall be subject to the specific regulations herein contained.

(a) *Nonconforming buildings.*

(1) A nonconforming building or structure may be occupied except as herein otherwise provided.

(2) Repairs and alterations may be made to a nonconforming building or structure, provided that no structural alteration shall be made except those required by law or this chapter, and further provided these regulations shall never be construed to allow an addition to a nonconforming building.

(3) A nonconforming building or structure shall not be added to or enlarged in any manner unless such addition and enlargements are made to conform to all the requirements of the district in which such building or structure is located.

(4) No nonconforming building or structure shall be moved in whole or in part to any other location on the lot, or on any other lot, unless every portion of such building or structure is made to conform to all the regulations of the district.

(5) A nonconforming building or structure which is damaged or partially destroyed by fire, flood, wind, explosion, earthquake, or other calamity or act of God shall not be again restored or used for such purpose if the expense of such restoration exceeds 75 percent of the replacement cost of the building or structure at the time such damage occurred. Any nonconforming building or structure partially destroyed may be restored provided restoration is started within 12 months of the date of partial destruction and is diligently prosecuted to completion. Whenever a nonconforming building or structure is damaged in excess of 75 percent of its replacement cost at that time, the repair or reconstruction of such building or structure shall conform to all the regulations of the district in which it is located, and it shall be treated as a new building.

(6) A non-conforming single or two-family residence located within the following industrial districts, M-1, M-2, M-1A, and M-2A, on or before August 26, 2019, may be repaired, altered including additions, and/or reconstructed if damaged or destroyed. All site development must comply with the development standards specified in the R-2A, Single-Family and Two-Family Residential District.

(7) A non-conforming multifamily development located within the following industrial districts, M-1, M-2, M-1A, and M-2A, on or before August 26, 2019, may be repaired, altered including additions, and/or reconstructed if damaged or destroyed. All site development shall be limited to the number of dwelling units existing immediately prior to the damage or destruction of the non-conforming multifamily development and must comply with the development standards specified in R-3H, Multifamily High Density District.

(b) *Nonconforming uses of buildings.*

(1) Except as otherwise provided in this chapter, the nonconforming use of the building or structure lawfully existing at the time of the effective date of this chapter may be continued.

(2) The use of a nonconforming building or structure may be changed to a use of the same or more restricted classification, but where the use of a nonconforming building or structure is hereafter changed to a use of a more restricted classification, it shall not thereafter be changed to a use of less restricted classification.

(3) A vacant, nonconforming building or structure lawfully constructed may be occupied by use for which the building or structure was designated or intended, if so occupied within a period of one year after the effective date of this chapter, and the use of a nonconforming building or structure lawfully constructed which becomes vacant after the effective date of this chapter may also be occupied by the use for which the building or structure was designated or intended, if so occupied within a period of one year after the building becomes vacant.

(c) *Nonconforming use of land.* Continuation of use.

(1) The nonconforming use of land existing at the time of the effective date of this chapter may be continued, provided that no such nonconforming use of land shall in any way be expanded or extended either on the same or adjoining property, and provided that if such nonconforming use of land or any portion thereof is discontinued or changed, any future use of land or portion thereof shall be in conformity with the provisions of this chapter.

(2) The nonconforming use of land as a single-family dwelling, two-family dwelling, or multifamily dwelling that was located within districts M-1, M-2, M-1A, or M-2A, on or before August 26, 2019, may be continued or expanded on the same land so long as any such nonconforming use is not abandoned.

(d) *Abandonment.* A nonconforming use of any building, structure or land which has been abandoned shall not thereafter be returned to such nonconforming use. A nonconforming use shall be considered abandoned:

(1) When the intention of the owner to discontinue the use is apparent;

(2) When the characteristic equipment and furnishings of the nonconforming use have been removed from the premises and have not been replaced by similar equipment within one year;

(3) When a nonconforming building, structure or land or portion thereof which is or hereafter becomes vacant and remains unoccupied or out of use for a continuous period of one year; or

(4) When it has been replaced by a conforming use.

(Ord. No. 2012-49, § 1(Exh. A), 9-10-12)

### SECTION 3

**THAT** Chapter 144, Zoning, Sections 3.3-1. "R-1" single-family district, 3.3-2. "R-2" single-family and two-family district, 3.3-3 "R-3" multifamily district, 3.3-6. "ZH" zero lot line home district, 3.3-7. "C-1" local business district, 3.3-8. "C-2" general business district, 3.3-9. "C-3" commercial district, 3.3-10. "C-4" resort commercial district, 3.4-1. "APD" agricultural/pre-development district, 3.4-2 "R-1A-43.5" single-family district, 3.4-2 "R-1A-12" single-family district, 3.4-2 "R-1A-8" single-family district, 3.4-2 "R-1A-6.6" single-family district, 3.4-2. "R-1A-5.5" single-family district, 3.4-2. "R-1A-4" single-family district, 3.4-3. "R-2A" single-family and two-family district, 3.4-9. "ZH-A" zero lot line home district, 3.4-10. "MU-A" low intensity mixed use district, 3.4-17. "C-O" commercial office district, are hereby amended with additions as underlined and deletions as stricken:

#### **3.3-1. "R-1" single-family district.**

The following regulations shall apply in all "R-1" districts:

- (a) Authorized uses. Uses permitted by right shall be those set forth in the land use matrix in section 144-4.2. The allowed uses in the district, which are intended to be identical with those listed in the land use matrix, are as follows:

- (1) Uses permitted by right.

Residential uses:

\*\*\*\*\*

Accessory dwelling (one accessory dwelling per lot, ~~no kitchen~~).

\*\*\*\*\*

#### **3.3-2. "R-2" single-family and two-family district.**

The following regulations shall apply in all "R-2" districts:

- (a) Authorized uses. Uses permitted by right shall be those set forth in the land use matrix in section 144-4.2. The allowed uses in the district, which are intended to be identical with those listed in the land use matrix, are as follows:

- (1) Uses permitted by right.

Residential uses:

Accessory dwelling (one accessory dwelling per lot, ~~no kitchen~~).

\*\*\*\*\*

### **3.3-3. "R-3" multifamily district.**

The following regulations shall apply in all "R-3" districts:

(a) *Authorized uses.* Uses permitted by right shall be those set forth in the land use matrix in section 144-4.2. The allowed uses in the district, which are intended to be identical with those listed in the land use matrix, are as follows:

(1) Uses permitted by right.

Residential uses:

Accessory building/structure.

Accessory dwelling (one accessory dwelling per lot, ~~no kitchen~~).

\*\*\*\*\*

### **3.3-6. "ZH" zero lot line home district.**

The following regulations shall apply in all "ZH" districts:

(a) *Authorized uses.* Uses permitted by right shall be those set forth in the land use matrix in section 144-4.2. The allowed uses in the district, which are intended to be identical with those listed in the land use matrix, are as follows:

(1) Uses permitted by right.

Residential uses:

Accessory building/structure.

Accessory dwelling (one accessory dwelling per lot, ~~no kitchen~~).

\*\*\*\*\*

### **3.3-7. "C-1" local business district.**

The following regulations shall apply in all "C-1" districts:

(a) *Authorized uses.* Uses permitted by right shall be those set forth in the land use matrix in section 144-4.2. The allowed uses in the district, which are intended to be identical with those listed in the land use matrix, are as follows:

(1) Uses permitted by right.

Residential uses:

Accessory building/structure.

Accessory dwelling (one accessory dwelling per lot, ~~no kitchen~~).

\*\*\*\*\*

### **3.3-8. "C-2" general business district.**

The following regulations shall apply in all "C-2" districts:

- (a) *Authorized uses.* Uses permitted by right shall be those set forth in the land use matrix in section 144-4.2. The allowed uses in the district, which are intended to be identical with those listed in the land use matrix, are as follows:

(1) *Uses permitted by right.*

*Residential uses:*

*Accessory building/structure.*

*Accessory dwelling (one accessory dwelling per lot, ~~no kitchen~~).*

\*\*\*\*\*

### **3.3-9. "C-3" commercial district.**

The following regulations shall apply in all "C-3" districts:

- (a) *Authorized uses.* Uses permitted by right shall be those set forth in the land use matrix in section 144-4.2. The allowed uses in the district, which are intended to be identical with those listed in the land use matrix, are as follows:

(1) *Uses permitted by right.*

*Residential uses:*

*Accessory building/structure.*

*Accessory dwelling (one accessory dwelling per lot, ~~no kitchen~~).*

\*\*\*\*\*

### **3.3-10. "C-4" resort commercial district.**

The following regulations shall apply in all "C-4" districts:

- (a) *Authorized uses.* Uses permitted by right shall be those set forth in the land use matrix in section 144-4.2. The allowed uses in the district, which are intended to be identical with those listed in the land use matrix, are as follows:

(1) *Uses permitted by right.*

*Residential uses:*

*Accessory building/structure.*

*Accessory dwelling (one accessory dwelling per lot, ~~no kitchen~~).*

\*\*\*\*\*

(Ord. No. 2012-49, § 1(Exh. A), 9-10-12; Ord. No. 2017-79, § 1, 10-23-17; Ord. No. 2019 55, §§ 1, 2, 8-26-19; Ord. No. 2019-76, §§ 1, 2, 11-11-19; Ord. No. 2021-07 , § 2, 2-8-21)

## **SECTION 3**

**THAT** Chapter 144, Zoning, Sections 3.4-1. "APD" agricultural/pre-development district, 3.4-2 "R-1A-43.5" single-family district, 3.4-2 "R-1A-12" single-family district, 3.4-2 "R-1A-8" single-family district, 3.4-2 "R-1A-6.6" single-family district, 3.4-2. "R-1A-5.5"

single-family district, 3.4-2. "R-1A-4" single-family district, 3.4-3. "R-2A" single-family and two-family district, 3.4-9. "ZH-A" zero lot line home district, 3.4-10. "MU-A" low intensity mixed use district, 3.4-17. "C-O" commercial office district, are hereby amended with additions as underlined and deletions as stricken:

**3.4-1. "APD" agricultural/pre-development district.**

\*\*\*\*\*

(1) *Uses permitted by right.*

*Residential uses:*

*Accessory building/structure.*

*Accessory dwelling (one accessory dwelling per lot, ~~no kitchen~~).*

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**3.4-2. "R-1A-43.5" single-family district.**

\*\*\*\*\*

(1) *Uses permitted by right.*

*Residential uses:*

*Accessory building/structure.*

*Accessory dwelling (one accessory dwelling per lot, ~~no kitchen~~).*

\*\*\*\*\*

**3.4-2. "R-1A-12" single-family district.**

\*\*\*\*\*

(1) *Uses permitted by right.*

*Residential uses:*

*Accessory building/structure.*

*Accessory dwelling (one accessory dwelling per lot, ~~no kitchen~~).*

\*\*\*\*\*

**3.4-2. "R-1A-8" single-family district.**

\*\*\*\*\*

(1) *Uses permitted by right.*

*Residential uses:*

*Accessory building/structure.*

*Accessory dwelling (one accessory dwelling per lot, ~~no kitchen~~).*

\*\*\*\*\*



### **3.4-2. "R-1A-6.6" single-family district.**

\*\*\*\*\*

(1) *Uses permitted by right.*

*Residential uses:*

*Accessory building/structure.*

*Accessory dwelling (one accessory dwelling per lot, ~~no kitchen~~).*

\*\*\*\*\*

### **3.4-2. "R-1A-5.5" single-family district.**

\*\*\*\*\*

(1) *Uses permitted by right.*

*Residential uses:*

*Accessory building/structure.*

*Accessory dwelling (one accessory dwelling per lot, ~~no kitchen~~).*

\*\*\*\*\*

### **3.4-2. "R-1A-4" single-family district.**

\*\*\*\*\*

(1) *Uses permitted by right.*

*Residential uses:*

*Accessory building/structure.*

*Accessory dwelling (one accessory dwelling per lot, ~~no kitchen~~).*

\*\*\*\*\*

### **3.4-3. "R-2A" single-family and two-family district.**

\*\*\*\*\*

(1) *Uses permitted by right.*

*Residential uses:*

*Accessory building/structure.*

*Accessory dwelling (one accessory dwelling per lot, ~~no kitchen~~).*

\*\*\*\*\*

### **3.4-9. "ZH-A" zero lot line home district.**

\*\*\*\*\*

(1) *Uses permitted by right.*

*Residential uses:*

*Accessory building/structure.*

*Accessory dwelling (one accessory dwelling per lot, ~~no-kitchen~~).*

\*\*\*\*\*

**3.4-10. "MU-A" low intensity mixed use district.**

\*\*\*\*\*

*(1) Uses permitted by right.*

*Residential uses:*

*Accessory building/structure.*

*Accessory dwelling (one accessory dwelling per lot, ~~no-kitchen~~).*

\*\*\*\*\*

**3.4-17. "C-O" commercial office district.**

\*\*\*\*\*

*(1) Uses permitted by right.*

*Residential uses:*

*Accessory building/structure.*

*Accessory dwelling (one accessory dwelling per lot, ~~no-kitchen~~).*

\*\*\*\*\*

(Ord. No. 2012-49, § 1(Exh. A), 9-10-12; Ord. No. 2017-78, § 2, 10-23-17; Ord. No. 2019-55, §§ 3, 4, 8-26-19; Ord. No. 2019-76, §§ 3, 4, 11-11-19; Ord. No. 2020-27, § 1, 4-13-20; Ord. No. 2020-28, § 1, 4-13-20; Ord. No. [2021-07](#), § 3, 2-8-21)

**SECTION 4**

**THAT** Chapter 144, Zoning, Section 4.2, Land Use Matrix,  
are hereby amended with additions as underlined and deletions as stricken:

LEGEND																																				
P - The land use is permitted by right in the zoning district indicated.																																				
- The land use is prohibited in the zoning district indicated (Blank).																																				
NOTE: Unless otherwise noted in this chapter, an application for a special use permit may be made for any land use not permitted in any district, except PD.																																				
Types of Land Uses	Pre-1987 Zoning Districts												Post-1987 Zoning Districts																							
	R	R	R	B	T	Z	C	C	C	C	M	M	A	R	R	R	R	R	R	R	R	B	B	T	Z	M	M	C	C	C	C	C	C	M	M	
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Access ory dwellin g (one access ory dwellin g per lot, <del>no kitchen</del> )	P	P	P			P	P	P	P	P			P	P	P	P	P	P	P	P					P	P								P		
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(Ord. No. 2012-49, § 1(Exh. A), 9-10-12; Ord. No. 2017-78, § 2, 10-23-17; Ord. No. 2019-01, § 1, 1-14-19; Ord. No. 2019-55, § 5, 8-26-19; Ord. No. 2019-69, § 1, 10-14-19; Ord. No. 2019-76, § 5, 11-11-19)

## SECTION 5

THAT Chapter 144, Zoning, Section 5.21, General provisions and exceptions; use, height and area regulations, are hereby amended with additions as underlined and deletions as stricken:

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### 5.21-1. General provisions.

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(b) Open storage or display and storage containers.

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~~(2) Accessory storage containers, such as "c-containers" must be placed in the rear yard and screened from view on all sides by a solid wall or fence not less than six feet in height from any adjoining residential use or zoning district that allows a residential use.~~

(3) (2) Mobile storage pod for onsite storage may not be larger than eight feet wide by 16 feet long by eight feet high and may not be placed on a lot for more than 30 days in a one-year period unless the property ownership changes or there is a change in occupancy of a rental unit as per lease agreement.

(4) (3) Roll-off dumpsters are permitted in residential areas for the temporary storage of construction and demolition debris, prior to disposal. They may be kept on private property for up to three consecutive months per year and they must be placed on the driveway or other hard surface. Roll-off dumpsters must be emptied every two weeks.

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(Ord. No. 2012-49, § 1(Exh. A), 9-10-12; Ord. No. 2013-6, § II, 1-28-13; Ord. No. 2020-42, § 1, 7-27-20; Ord. No. [2021-07](#), § 8, 2-8-21)

## SECTION 6

it is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

## SECTION 7

**THAT** all provisions of the Code of Ordinances of the City of New Braunfels not herein amended or repealed shall remain in full force and effect.

#### **SECTION 8**

**THAT** all other ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict only.

#### **SECTION 9**

**THAT** in accordance with the provisions of the City Charter, this Ordinance may be read and published by descriptive caption only. This Ordinance has been publicly available in the office of the City Secretary prior to its adoption.

#### **SECTION 10**

**THIS** ordinance will take effect upon the second and final reading in accordance with the provisions of the Charter of the City of New Braunfels.

**PASSED AND APPROVED:** First reading this 10<sup>th</sup> day of April 2023.

**PASSED AND APPROVED:** Second reading this 24<sup>th</sup> day of April 2023.

**CITY OF NEW BRAUNFELS**

\_\_\_\_\_  
**RUSTY BROCKMAN**, Mayor

**ATTEST:**

\_\_\_\_\_  
**GAYLE WILKINSON**, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**VALERIA M. ACEVEDO**, City Attorney