

**ORDINANCE NO. 2020-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS, AMENDING THE NEW BRAUNFELS CODE OF ORDINANCES, CHAPTER 144 ZONING SECTION 3.6 SPECIAL USE PERMITS; 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 promoting use compatibility, including Action Item 1.11: Update policies and codes to achieve development patterns that implement the goals of Envision New Braunfels, Action 1.14: Ensure regulations do not unintentionally inhibit the provision of a variety of flexible and innovative lodging options and attractions. Action Item 2.1 Sustain community livability for all ages and economic backgrounds. Action 3.6: Proactively provide a regulatory environment that remains business and resident friendly. Action 3.10: Change zoning/land use and platting rules and create tax and permit fee incentives in underutilized neighborhoods, nodes and corridors to encourage redevelopment. Action 4.26: Enhance community sense of place by creating spaces and facilities that reflect the community; and

**WHEREAS**, the Special Use Permit process is a land use compatibility tool in New Braunfels' Zoning Ordinance for City Council to consider authorizing uses in certain zoning districts where not otherwise allowed; and

**WHEREAS**, decisions on use compatibility are based on development patterns at a given time; and

**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 7, 2020 and recommended approval of the proposed amendments; and

**WHEREAS**, the City Council held a public hearing on said amendments on April 13, 2020; and

**WHEREAS**, the City Council hereby finds and determines that updating the time period from when a Special Use Permit is approved to commencement of construction, correcting the revocation process, and other herein updates and clarifications to the Special Use Permit process are in the best interest of the citizens of New Braunfels, Texas.

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

### **SECTION 1**

**THAT** Chapter 144, Zoning, Sec. 144-3.6. - Special use permits is hereby amended with additions as underlined and deletions as strikeouts as follows:

3.6-1. *Compatible and orderly development.* As defined in Section 1.4, Definitions, a special use permit may be granted to allow compatible and orderly development which may be suitable only in certain locations and zoning districts if developed in a specific way or only for a limited period of time.

3.6-2. *Application processing.* Application for a special use permit shall be processed in accordance with section 144-2.1 and shall include the pertinent information as determined by the type of special use permit and additional information as determined by the planning ~~director~~ and development services department director or his/her designee, the planning commission or the city council.

*Types of special use permits:*

*Type 1.* Regulates land use only; does not require specific site plan or schedule. Construction within a Type 1 special use permit will comply with all of the standard construction requirements for the approved use at the time of construction permit, including drainage plans, TIA, driveway location, and landscaping.

*Type 2.* Requires a site plan drawn to scale and shall show the arrangement of the project in detail, including parking facilities, locations of buildings, uses to be permitted, landscaping, and means of egress and ingress.

3.6-3. *Standards.* When considering applications for a special use permit, the planning commission in making its recommendation and the city council in rendering its decision on the application shall, on the basis of the site plan, if a Type 2, and other information submitted, evaluate the impact of the special use on, and the compatibility of the use with, surrounding properties and neighborhoods to ensure the appropriateness of the use at a particular location. The planning commission and the city council shall specifically consider the extent to which:

- (a) *Comprehensive plan consistency.* The proposed use at the specified location is consistent with the goals, ~~objectives~~strategies and ~~policies~~actions contained in the adopted comprehensive plan;
- (b) *Zoning district consistency.* The proposed use is consistent with the general purpose and intent of the applicable zoning district regulations;
- (c) *Supplemental standards.* The proposed use meets all supplemental standards specifically applicable to the use as set forth in this chapter;
- (d) *Character and integrity.* The proposed use is compatible with and preserves the character and integrity of adjacent development and neighborhoods and, as required by the particular circumstances.

A Type 2 special use permit may include improvements or modifications either on-site or within the public rights-of-way to mitigate development-related adverse impacts, including but not limited to:

- (1) Adequate ingress and egress to property and proposed structures thereon with particular reference to vehicular and pedestrian safety and convenience, and access in case of fire;
  - (2) Off-street parking and loading areas;
  - (3) Refuse and service areas;
  - (4) Utilities with reference to location, availability, and compatibility;
  - (5) Screening and buffering, features to minimize visual impacts, and/or set-backs from adjacent uses;
  - (6) Control of signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;
  - (7) Required yards and open space;
  - (8) Height and bulk of structures;
  - (9) Hours of operation;
  - (10) Paving of streets, alleys, and sidewalks;
  - (11) Provisions for drainage;
  - (12) Reference to exterior construction material in this subsection 12 is suspended until authorized by a change in state law or case law; Exterior construction material and
  - (13) Building design, and
  - (14) Roadway adjustments, traffic control devices or mechanisms, and access restrictions to control traffic flow or divert traffic as may be needed to reduce or eliminate development-generated traffic on neighborhood streets.
- (e) *Public health, safety, convenience and welfare.* The proposed use is not materially detrimental to the public health, safety, convenience and welfare, or results in material damage or prejudice to other property in the vicinity.

3.6-4. *Procedures for special use permit (SUP).* Granting of an SUP is considered zoning and as such, all the procedures for changing a zoning district apply to an application for an SUP. After a public hearing and upon the recommendation of the planning commission, the city council may approve, deny or modify the site plan and issue a special use permit containing such requirements and safeguards as necessary to protect adjoining property, including conditions addressing the standards in subsection 144-3.6-3(d).

3.6-5. *Revocation.*

~~(a) The SUP for a~~ A Type 1 ~~permit SUP~~ may be considered for revocation if:

1. a use other than the use approved in the SUP or in the underlying zoning district is developed, or
2. other stated requirements or conditions are not met

~~(b) The SUP for a~~ A Type 2 ~~permit SUP~~ may be considered for revocation for any of the following reasons:

- ~~(a)~~ 1. Construction is not begun within ~~five~~ three years of the date of approval of the ~~permit SUP~~.
- ~~(b)~~ 2. Progress toward completion is not being made. Progress toward completion includes the following:
  - ~~(1)~~ i. An application for a final plat is submitted;
  - ~~(2)~~ ii. A good faith effort is made to file with a regulatory agency an application for a permit necessary to begin or continue completion of the project;
  - ~~(3)~~ iii. Costs have been incurred for developing the project including, without limitation, costs associated with roadway, utility, and other infrastructure facilities designed to serve in whole or in part, the project (but exclusive of land acquisition) in the aggregate amount of five percent of the most recent appraised market value of the real property on which the project is located;
  - ~~(4)~~ iv. Security is posted with the city to ensure performance of an obligation required by the city; or
  - ~~(5)~~ v. Utility connection fees or impact fees for the project have been paid to the city or ~~New Braunfels Utilities~~ pertinent utility provider.
- ~~(c)~~ 3. Abandonment of the project. Abandonment includes development of the property in a way other than provided for by the SUP.
- ~~(d)~~ 4. Failure to satisfy the conditions of the SUP or follow the site plan made part of the SUP or meet other stated requirements.
- ~~(e)~~ 5. Code violations. ~~Revocation may be considered if there are three or more Code violations in a 720-day period.~~
  - ~~(1) Notice to property owner. If the planning director finds no less than three violations of any Code of Ordinances on the property within a 360-day period, he shall advise the applicant of a revocation hearing. The planning director shall notify the property owner in writing of the violations and that an administrative hearing concerning the violations. Such notice shall be given at least ten days~~

~~prior to the hearing. The planning director shall take evidence and conduct an administrative hearing to determine if a revocation procedure should be initiated. Such a determination is not subject to appeal to the zoning board of adjustment.~~

~~(2)~~ If ~~the planning director~~ the code compliance division finds that there is credible evidence that the Code of Ordinances has been violated, or there have been convictions or guilty pleas in any court of competent jurisdiction, on at least three separate occasions within a 7230-day period, ~~and after the administrative hearing, the City~~ shall initiate ~~a the~~ SUP revocation process, which follows the rezoning process including all notice and public hearing requirements for consideration.

~~(3)iii. Appeal to municipal court. Any Code violation may be appealed to, or considered by, the municipal court judge. The parties at interest in this appeal may cross examine witnesses.~~

~~(c)(f)~~ Revocation process. The revocation process shall be the same as for a zoning district change, with notice to property owners within 200 feet, public hearing and recommendation by the planning commission, and public hearing and ordinance consideration by the city council.

~~(d)(g)~~ The city council may deny the SUP revocation, approve the revocation, deny the revocation and add additional restrictions to the SUP, suspend the SUP for a period the council determines, or amend the SUP with probationary requirements and terms the council determines.

~~(e)(h)~~ Upon revocation of a special use permit the property subject to the special use permit may be used for any permitted use within the applicable base zoning district.

(6) Notwithstanding the foregoing, City Council reserves the right to initiate a rezoning of the subject property and remove the SUP or make other changes.

3.6-6. *Compliance with conditions.* Conditions which may have been imposed by the city council in granting such ~~permit~~ SUP shall be complied with by the grantee before a certificate of occupancy may be issued by the building ~~official~~ safety division for the use of the building on such property.

3.6-7. *Telecommunication towers and/or antennas.* See section 144-5.7.

3.6-8. *Deviation from Code.* The city council may approve a special use permit with deviations to any provision of the Code of Ordinances. Such deviations shall be listed or shown in or as part of the ordinance approving the special use permit.

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

## **SECTION 2**

**THAT**, 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 3**

**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 4**

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

## **SECTION 5**

**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 6**

**THAT** this Ordinance shall become adopted and effective upon its second reading, signature required by City Charter, and filing with the City Secretary's Office. This Ordinance must also be published in a newspaper of general circulation at least one time within ten (10) days after its final passage, as required by the City Charter of the City of New Braunfels, Texas.

**PASSED AND APPROVED:** First reading this the 13<sup>th</sup> day of April, 2020.

**PASSED AND APPROVED:** Second reading this the 27<sup>th</sup> day of April, 2020.

**CITY OF NEW BRAUNFELS**

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**BARRON CASTEEL**, Mayor

**ATTEST:**

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**PATRICK D. ATEN**, City Secretary

**APPROVED AS TO FORM:**

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**VALERIA M. ACEVEDO**, City Attorney