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# Article 1: General Provisions

## 101 Title

This chapter may be cited and referred to as the "Unified Development Code of the City of McKinney, Texas," the "McKinney UDC," or "this Code." This Code includes articles governing multiple development topics including but not limited to zoning, subdivisions, stormwater, and signage.

## 102 Purpose

This Code consolidates development-related regulations, including zoning, subdivision, signage, fencing, and stormwater standards, for property within corporate limits of the City of McKinney and, to the extent allowed by law, its extraterritorial jurisdiction (ETJ). This Code is intended to align development in McKinney with the vision outlined within the Comprehensive Plan, along with any other applicable goals, policies, regulations, and standards adopted by the City. This Code's purpose is to ensure that developments are compatible; they can be served by existing and planned infrastructure; and they support the health, safety, and welfare of the residents of McKinney.

## 103 Applicability

Unless otherwise stated or permitted by law, this Code applies to all land, buildings, structures, site features, and uses located within the City and, if applicable, its ETJ. Unless otherwise stated in this Code, whenever provisions in this Code conflict with provisions in other city regulations or with other provisions within this Code, the provision that is more restrictive or particular shall govern over the provision that is less restrictive or general. No land shall be used or divided, and no structure shall be constructed, occupied, enlarged, altered, or moved until:

1. All applicable development review and approval processes have been followed in accordance with this Code;
2. All applicable approvals have been obtained; and
3. All required permits or authorizations to proceed have been issued.

## 104 Compliance Required

The requirements in this Code shall be considered the minimum information the applicant must submit for a review procedure to begin. The applicant may need to submit additional information to demonstrate satisfaction of the applicable review criteria.

## 105 Relationship to Private Covenants and Conditions

This Code is not intended to interfere with, revoke, or repeal any easement, covenant, or other agreement between private parties. However, where the regulations of this Code are more restrictive or impose higher standards or requirements than such easement, covenant, or agreement, then the regulations of this Code shall govern. Nothing in this Code shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not excuse any failure to comply with this Code. In no case shall the City be obligated to monitor or enforce the provision of any easement, covenant, or agreement between private parties.

## 106 Transition from Previous Ordinances

### A. Continuity

The provisions of this Code, insofar as they are substantially the same as previously existing provisions of the McKinney Code relating to the same subject matter, shall be construed as restatements and continuations thereof and not new enactments. Any actions, proceedings, or permits commenced or issued pursuant to any previously existing ordinance and subject to TLGC Chapter 245 shall not be affected by the enactment of this Code.

### B. Specific Use Permits

Specific Use Permits approved prior to adoption of this Code shall remain in effect pursuant to the provisions of 203C.3, *Specific Use Permit*. In cases where an SUP has previously been approved but is no longer required based on Table 2-26: Table of Uses, a request to void said previous SUP may be approved by the City Council following notice and a Public Hearing as required by law.

### C. Violations Continue

Any violation of the previous ordinances and regulations will continue to be a violation under this Code and will be subject to penalties and enforcement under this Code, unless the use, development, construction, or other activity complies with the provisions of this Code. The enactment of this Code shall not abate any pending prosecution and/or lawsuit or prevent any prosecution and/or lawsuit from being commenced for any violation of a previously existing ordinance occurring before the effective date of this Code.

## 107 Severability

- A. It is expressly declared that this Code and each section, subsection, sentence, and phrase would have been adopted regardless of whether one or more other portions of the Code is declared invalid or unconstitutional.
- B. A determination by a court of competent jurisdiction that any section, subsection, sentence, or phrase of this Code is unconstitutional or invalid for any reason does not make the remainder of the Code unconstitutional or invalid. A determination by a court of competent jurisdiction that the application of this Code to a particular structure or parcel of land is unconstitutional or invalid does not affect the application of that provision to any other building, structure, or use not specifically included in that judgment. A determination by a court of competent jurisdiction that a condition attached to the approval of an application for development is unconstitutional or invalid does not affect any other conditions or requirements attached to the same approval that are not specifically included in that judgment.

## 108 Maintenance, Enforcement, and Penalties

### **A. Authority**

1. The appropriate Administrative Official shall have the right, subject to their compliance with applicable state and federal law, to enter upon any premises at any reasonable time for the purpose of enforcement of this Code.
2. Whenever any construction work is being performed contrary to the provisions of this Code, the appropriate Administrative Official may order the work stopped by notice in writing served on the owner or contractor performing or causing such work to be performed, and any such persons shall stop such work until authorized by the appropriate Administrative Official to proceed with the work.
3. Whenever the Chief Building Official or Director of Code Services has reasonable cause to believe that there exists any condition or violation which makes a structure or premises unsafe, dangerous, or hazardous, the Administrative Official, as authorized by law, may, subject to their compliance with applicable state and federal law, request entry into such structure or premises to inspect the same or to perform any duty imposed upon the Administrative Official by this Code. If the structure or premises is occupied, the Official shall first present proper credentials and request entry. If the structure or premises is unoccupied, they shall first make a reasonable effort to request entry from the owner or other persons in control of the structure or premises. If such entry is refused or permission to enter cannot be obtained, the Official shall have recourse to every remedy provided by law to obtain entry.

### **B. Maintenance**

#### **1. Generally**

- a. All applications, agreements, developments, properties, lots, buildings, structures, accessory structures, fences, site features, or other items required herein shall comply with applicable provisions of this Code.
- b. The property owner shall be responsible for maintaining all buildings, structures, accessory structures, and site features in good repair and in a structurally sound condition in compliance with this Code.
- c. The property owner shall be responsible for all repairs and for correction of use violations. Failure to maintain or restore buildings, structures, or site features in compliance with this Code is considered a violation and may be subject to penalties under §108D, *Violations and Penalties*.
- d. Those properties with a legal nonconforming status shall be maintained in compliance with §201C, *Legal Nonconformities*.

#### **2. Landscaping Maintenance**

- a. The owner, tenant, and/or their agent, if any, shall be jointly and severally responsible for the maintenance of all landscaping, both living and non-living. All required landscaping shall be maintained in a neat and orderly manner at all times. This shall include, but not be limited to:
  - I. Mowing (of grass of 12 inches or higher);
  - II. Edging;
  - III. Pruning;
  - IV. Watering;
  - V. Weeding;
  - VI. Tree Maintenance;
  - VII. Removal of any trash or debris; and
  - VIII. Other such activities common to the maintenance of landscaping.
- b. Responsibility for landscape maintenance in common open areas shall be assigned to the homeowners' association (HOA) or the property owners' association (POA) via a note on the plat.

- c. The maintenance of landscaping, both living and non-living, adjacent to the public roadway, including a street's parkways and alleys, shall be the responsibility of the owner of the adjacent property or the HOA or POA.
- d. Living and non-living landscaping, including trees, shall not obstruct any right-of-way or sight visibility areas, including sidewalks, streets, fire lanes, or drive aisles. All landscaping shall be maintained in accordance with Section 70-56 Weeds, brush, and other objectionable or unsightly matter, etc. Low ground cover shall be maintained not to obstruct visibility based on topography and a sight visibility analysis, as defined by the Engineering Design Manual.
- e. Landscape areas shall be kept free of trash, debris, weeds, and other such material or plants not a part of the landscaping.
- f. All plant material shall be maintained in a healthy and growing condition as appropriate for the season of the year.
- g. Plant materials used to meet minimum required landscaping provisions that die or are removed for any reason shall be replaced with plant material of similar variety and size, within 90 days of issuance of a notice from the City.
  - I. Trees with a trunk less than four inches in caliper at six inches above the ground shall be replaced with a four-inch caliper tree of a similar variety.
  - II. Trees with a trunk greater than four inches in caliper measured 12 inches above the ground shall be replaced with a four-inch caliper tree of a similar variety.
  - III. If any tree that was preserved and used as a credit toward landscaping requirements in accordance with Table 2-29: *Tree Preservation Credits* is later removed for any reason, it shall be replaced by the number of trees for which it was originally credited. Replacement trees shall have a minimum trunk diameter of four inches in caliper measured six inches above the ground.
  - IV. A time extension may be granted by the Director of Code Services if substantial evidence is presented to indicate abnormal circumstances, such as persistent drought, beyond the control of the owner, tenant, or his agent.

### **3. Parking and Drive Aisle Maintenance**

- a. The property owner shall be responsible for adequately maintaining all paving to the edge of street pavement in a continuous, undamaged condition. Pavement striping, including on driveway approaches, shall be maintained by the property owner in a condition sufficient to ensure proper visibility and function. The property owner shall also be responsible for the correction of use violations.
- b. All on-site parking areas shall be kept free of trash, debris, weeds, vehicle repair operations, display, and advertising uses. Any Donation Containers, as described in Section 2051.2, shall be maintained in accordance with the regulations of this Code.

### **4. Signs Maintenance**

- a. Any property owner or permit holder for a sign shall maintain all parts and supports of the sign in good condition to prevent deterioration, oxidation, rust, and other unsightly conditions.
- b. The Building Inspection Department shall inspect annually, or at such other times as deemed necessary, each sign regulated by Article 5: *Signs*, for the purpose of determining whether the sign is secure and whether it is in need of removal or repair.

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## **C. Enforcement**

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- 1. The City may utilize any enforcement remedies available in compliance with state law in order to gain compliance with the standards of this Code. Remedies include, but are not limited to, ordering repair, removal, replacement, alteration, fees/fines, or discontinuance of those features or uses found to be out of compliance with this Code.
- 2. Additional enforcement regulations are provided in Article 8: Stormwater Management.

## D. Violations and Penalties

### 1. General Violations

Any person, firm, or corporation who violates any provision of this Code or fails to comply with any of the requirements thereof, or who shall build or alter any building, land, or use in violation of any detailed statement or plan submitted and approved hereunder, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine in accordance with Section 1-18 of the McKinney Code, which may be amended from time to time by ordinance. The owner or owners or tenant of any building or premises or part thereof, where anything in violation of this Code shall be placed or shall exist, and any architect, engineer, builder, contractor, agent, person, or corporation employed in connection therewith and who may have assisted in the commission of any such violation shall be guilty of a separate offense punishable under this section. Additional procedures for violations and penalties may be imposed as outlined in specific sections of this Code and below.

### 2. Reserved

### 3. Certificates of Appropriateness

- a. In the Commercial Area of the historic overlay district. Any person, firm, or corporation who shall violate any of the provisions of sections §204Z H – *Historic Overlay* or §203E.6 *Certificate of Appropriateness* or who shall fail to comply with the provisions hereof shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine not to exceed the maximum permissible fine allowed by state law; and each day that such violation continues shall constitute a separate offence and shall be punishable accordingly.
- b. In the residential area of the historic overlay district. Any person, firm, or corporation who shall violate any of the provisions sections §204Z H – *Historic Overlay* or §203E.6 *Certificate of Appropriateness* or who shall fail to comply with the provisions hereof shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine not to exceed \$200.00; and each day that such violation continues shall constitute a separate offence and shall be punishable accordingly.
- c. These penal provisions shall not prevent an action on behalf of the city to enjoin any violation of the terms of this section or an action for mandatory injunction to remove any previous violation thereof.

### 4. Signs

- a. Any person, firm, corporation, association, or other entity who violates any of the provisions of Article 5: *Signs*, or causes or permits the same to be done in violation of this section shall be guilty of a class C misdemeanor and, upon conviction, shall be subject to a fine not to exceed the maximum permissible fine allowed by state law. It shall be presumed that a person, firm, corporation, association, or other entity is responsible for the violation if the person, firm, corporation, association, or other entity is:
  - I. The permit holder for the sign, or
  - II. The owner, operator, agent or manager of an entity or business that, or person who, is promoted by the sign or listed on the sign as responsible for the sign.
- b. This presumption may be rebutted if the named violator provides the full name, date of birth (person) or date of formation (entity), physical and mailing address, and telephone number or numbers for the person, firm, corporation, association, or other entity responsible for the violation.

## 109 Filing Fees and Charges

Fees and charges shall be paid in accordance with [Appendix A – Schedule of Fees](#) of the Code of Ordinances, which may be amended from time to time by ordinance.

1. Fees and charges shall be paid to the City when any application, petition, or appeal is submitted to the City.
2. Fees and charges shall be paid regardless of the action taken by a Commission, Council, Board, or official of the City, and whether the application, petition, or appeal is approved or denied by the final decision maker.

## **Article 1: General Provisions**

109 Filing Fees and Charges

D Violations and Penalties

Such fees and charges shall not, however, be charged or paid for any amendment, change, or other action initiated by the City.

## 110 Administrative Authority

### A. Executive Director of Development Services

1. The provisions of this Code shall be administered by the Executive Director of Development Services, unless otherwise stated herein.

### B. Boards and Commissions

#### 1. Board of Adjustment

A Board of Adjustment is hereby established in accordance with the provisions of TLGC §211.008 et seq. and shall have the authority and responsibilities outlined in this Code and as prescribed by state law and the City Charter. The Board of Adjustment may also serve as the Sign Board.

##### a. Powers and Duties of Board

##### I. Appeals of Administrative Decisions

Appeals of an Administrative Official's zoning decision may be heard by the Board of Adjustment. These appeals may be made by any person aggrieved by the Administrative Official's decision, or by any officer, department, board, or bureau of the City affected by the decision.

##### II. Reinstate a Legal Nonconforming Use

The Board of Adjustment may reinstate the legal nonconforming status of a use that had been determined to be abandoned, if the Board finds that evidence presented by the property owner is sufficient to demonstrate the lack of abandonment or lack of intent to abandon the use.

##### III. Subpoena Witnesses

The presiding officer or acting presiding officer shall have the power to compel the attendance of witnesses, administer oaths, and may require the production of documents, under this Code and such rules as the board may establish.

##### IV. Appeals Based on Error

The Board shall have the power to hear and decide appeals where it is alleged there is error in any order, requirements, decision, or determination made by an Administrative Official in the enforcement of this Code.

##### V. Special Exceptions

The Board shall have the power to hear and decide Special Exceptions in accordance with §203G.2, *Special Exception*.

##### VI. Variances

The Board shall have the power to authorize upon appeal in specific cases such variance from the terms of this Code in accordance with §203G.3, *Variance*.

##### VII. Changes

The Board shall have no authority to change any provisions of this Code. The Board may not change the zoning district designation of any land either to a more restrictive or less restrictive zoning district and may not approve or authorize a specific use permit or any use in a zoning district where such use is not otherwise allowed.

##### VIII. Amortization of Nonconforming Land Uses

The Board shall have the authority to establish a compliance date for nonconforming uses at the request of the City Council in accordance with §201C.8, *Amortization of Legal Nonconforming Uses*.

#### 2. City Council

The City Council shall have the authority and responsibilities outlined in this Code and as prescribed by state law and the City Charter.

#### 3. Historic Preservation Advisory Board

A Historic Preservation Advisory Board (HPAB) is hereby established.

**a. Membership**

The Board shall consist of seven members appointed by the City Council and may be comprised of any citizen of the City interested in historic preservation. To the extent possible, the members should be appointed in the following areas of expertise: architect, city planner, or representative of a design profession; historian; licensed real estate broker; attorney; or property owner of a landmark or of a building in a historic district. All board members, regardless of background, shall have a known and demonstrated interest, competence, or knowledge of historic preservation within the City. Board members shall serve for staggered terms of two years and at the will and pleasure of the City Council. The chairman and vice chairman of the Board shall be elected by and from the members of the Board and shall serve for a term of one year.

**b. Powers and Duties of Board**

The Board shall have the power to:

- I. Adopt rules and procedures as necessary to provide for the orderly conduct of Board meetings;
- II. Recommend criteria for the identification of historic, architectural, and cultural landmarks;
- III. Conduct surveys and maintain an inventory of significant historic, architectural, and cultural landmarks and historic districts within the City;
- IV. Maintain written minutes, which record all recommendations and actions taken by the Board and the reasons for taking such actions;
- V. Recommend conferral of recognition upon the owners of landmarks or within districts by means of certificates, plaques, or markers;
- VI. Increase public awareness of the value of historic, cultural, and architectural preservation by encouraging and participating in public education programs developed by the Historic Preservation Officer;
- VII. Make recommendations to the City concerning the utilization of state, federal, or private funds to promote the preservation of landmarks and historic districts within the City;
- VIII. Recommend the acquisition of landmark structures by the City where the preservation of such structures is essential, but private preservation is not feasible;
- IX. Recommend specific design guidelines for the review of landmarks and districts to ensure compatibility within the district;
- X. Approve or disapprove applications for a historic marker under the historic neighborhood improvement zone program. An application denied under this subsection may be appealed to the City Council; and
- XI. Approve or disapprove Certificate of Appropriateness, as defined in §203E.6, applications forwarded by the Director of Planning, plus any appeals for Certificate of Appropriateness decisions made by the Director of Planning.

**c. Meetings and Quorums**

- I. The Board shall meet monthly when business is at hand. Special meetings may be called at any time as requested by the HPO. All meetings shall be held in conformance with the Texas Open Meetings Act, Texas Government Code Chapter 551.
- II. A quorum for the transaction of business shall consist of four of the Board's members.

**4. Planning and Zoning Commission**

The Planning and Zoning Commission shall have the authority and responsibilities outlined in this Code and as prescribed by state law and the City Charter. The Planning and Zoning Commission may also serve as the Tree Board.

**5. Sign Board**

The board, appointed by the City Council, that is charged with considering and acting on meritorious exception requests, variances, appeals, and other similar requests related to signage. Typically, the Board of Adjustment serves as the Sign Board.

**6. Tree Board**

A Tree Board is hereby established to review and make recommendations to the City Council regarding amendments to the City's Reforestation Plan. The Planning and Zoning Commission shall constitute the Tree Board unless the City Council appoints a separate board. Any appeals of Tree Board decisions shall be processed in accordance with §203F.2, *Certain Appeals to City Council*.