

ORDINANCE NO. 2020-33

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS AMENDING ITS CODE OF ORDINANCES BY AMENDING SECTION 50-79, OLD TOWN AND MIXED-USE DISTRICT (OT AND MU), OF ARTICLE III, DISTRICT REGULATIONS, OF CHAPTER 50, ZONING, TO ALLOW A ZERO FRONT OR REAR BUILDING LINE FOR LOTS WITHIN THE PORTION OF THE OLD TOWN AREA BOUNDED BY FANNIN STREET, HOUSTON STREET, THE RAILROAD TRACKS, AND PINE STREET, AND INCLUDING THE LOTS THAT FRONT ON FANNIN STREET AND HOUSTON STREET ADJACENT TO SUCH PORTION UNDER CERTAIN CONDITIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY OF AN AMOUNT NOT TO EXCEED \$2,000 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF; MAKING FINDINGS OF FACT; AND PROVIDING FOR OTHER RELATED MATTERS.

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WHEREAS, the City Staff presented the proposed text amendment regarding the size of yards in the Old Town Mixed-Use District (OT and MU) to the Planning and Zoning Commission; and

WHEREAS, at least fifteen (15) days after the publication in the official newspaper of the City of the time and place of a public hearing, the Planning and Zoning Commission held a public hearing regarding the proposed text amendment; and

WHEREAS, the Planning and Zoning Commission recommended in its final report that the City Council approve the requested text amendment; and

WHEREAS, at least fifteen (15) days after the publication in the official newspaper of the City of the time and place of a public hearing, the City Council held a public hearing on the proposed text amendment; and

WHEREAS, the City Council finds it to be in the best interest of the health, safety and welfare of the citizens to approve the text amendment as contained in this ordinance; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS:

Section 1. The facts and matters contained in the preamble to this ordinance are hereby found to be true and correct.

Section 2. The Code of Ordinances of the City of Tomball, Texas is hereby amended by adding to Section 50-79, Old Town and Mixed-Use District (OT and MU), of Article III, District Regulations, of Chapter 50, Zoning, the language underscored below:

“Section 50-79. - Old Town and Mixed-Use District (OT and MU).

.....

(d) *Area regulations for residential uses.*

.....

(2) *Size of yards.*

- a. Minimum area requirements for a single-family residence shall be the same as the SF-6 district.
- b. Minimum area requirements for a Duplex (Two-Family) or Duplex Townhome shall be the same as the Duplex District.
- c. Minimum area requirements for a multifamily complex shall be the same as the MF district unless otherwise specified herein.
- d. Minimum front yard: 20 feet. Where lots have double frontage, running through from one street to another, the required front yard shall be provided on both streets.
- e. Minimum side yard: five feet; ten feet for a corner lot.
- f. Minimum rear yard is ten feet; the minimum rear yard where lots back on a designated arterial street shall not be less than 25 feet. However, lots backing up to a 20 foot alley shall have a 5 foot minimum rear yard and abutting a 15 foot alley shall have a 7.5 foot minimum rear yard.
- g. Encroachment by building eaves and air conditioning units: building eaves and air conditioning compressors may encroach not

more than three feet beyond building lines into the required rear and side yard on lots created by subdivision plats for single-family residential use duly approved by the city and recorded with the county clerk of either county, as applicable, on or before November 1, 1999.

- h. Lots within the portion of the Old Town area bounded by Fannin Street, Houston Street, the railroad tracks, and Pine Street, and including the lots that front on Fannin Street and Houston Street adjacent to such portion, may have a zero front or rear building line provided, however, that the alternate front or rear building line shall be a minimum of 20 feet. Interior lots may have a minimum side yard building line equal to 10% of the lot width if the lot has less than 50 feet of width; ten feet for a corner lot.

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- (e) *Area regulations for nonresidential uses.*

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- (2) *Size of yards.*

- a. Minimum area requirements for an office, retail or commercial use shall be the same as required in the Commercial District unless otherwise specified in this section,
- b. Minimum front yard is 20 feet. With the exception of Cherry Street, for that portion of the Old Town area bounded by Fannin Street, Houston Street, the railroad tracks, and Pine Street, and including the lots that front on Fannin Street and Houston Street adjacent to such portion, may have a zero front building line.
- c. Minimum side and rear yard is five feet or ten percent of the lot width if less than 50 feet of lot width when adjacent to a nonresidential zoning district or use. If adjacent to a Single-Family, Duplex (Two-Family), Patio Home or Single-Family Attached District or use, then side and/or rear setback shall be a minimum of 20 feet. With the exception of Cherry Street, for that portion of the Old Town area bounded by Fannin Street, Houston Street, the railroad tracks, and Pine Street, and including the lots that front on Fannin Street and Houston Street adjacent to such portion, lots adjacent to a public right-of-way may have a zero foot side and rear yard setback provided no portion of the building obstructs the visibility of vehicular traffic.

- d. Interior side yards: when retail uses are platted adjacent to other retail uses and integrated into an overall shopping center site (i.e., lots/lease spaces abutting one another), no side yard is required provided it complies with the city’s building code.

- e. Old Town area required yard and building line exceptions. A commercial building constructed in the Old Town area before August 16, 1999, and which does not comply with the building lines set forth above, may expand in size provided it maintains a minimum ten-foot front building line and a minimum ten-foot side building line, provided the owner demonstrates and the chief building official determines that the use as conducted and managed, or as proposed, has minimal incompatibilities with the neighborhood. Factors used to evaluate this include:
 - 1. That management practices eliminate problems such as noise, waste materials, competition for on-street parking, or similar conflicts.
 - 2. The use’s history of code enforcement complaints against it.
 - 3. That the use has been maintained in good condition or that the nonconformity represents a disincentive for such maintenance.
 - 4. Appeal of the chief building official’s determination shall be to the planning and zoning commission with the same notice requirements to adjacent property owners as to the board of adjustments.

- f. Vacant land, or lots or tracts formerly used as residential property, may be developed for commercial use without conforming to the building line requirements of this chapter if the property owner or his agent establishes the following:
 - 1. Three or more properties within a three-block distance, whether on the same side of the street or across the street, have the same nonconformity; and
 - 2. Proposed development plans for the property are no more nonconforming than existing properties on the same street and maintain the same character as existing buildings.

.....”

Section 3. In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

Section 4. Any person who shall intentionally, knowingly, recklessly or with criminal negligence violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction, shall be fined in an amount not to exceed \$2,000. Each day of violation shall constitute a separate offense.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 16 DAY OF November, 2020.

COUNCILMAN FORD	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN DEGGES	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN KLEIN QUINN	<u>AYE</u>

SECOND READING:

READ, PASSED, AND ORDAINED AS SET OUT BELOW AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL, HELD ON THE 7TH DAY OF December, 2020.

COUNCILMAN FORD	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN DEGGES	<u>ABSENT</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN KLEIN QUINN	<u>AYE</u>

Gretchen Fagan
GRETCHEN FAGAN, Mayor
City of Tomball

ATTEST:

Tracylynn Garcia (for)
DORIS SPEER, City Secretary
City of Tomball