

ORDINANCE

AN ORDINANCE AMENDING APPENDIX B ZONING, OF THE CITY OF BURLESON, TEXAS CODE OF ORDINANCES BY ADDING A HEAVY AND HIGH ENERGY INDUSTRIAL DISTRICT; PROVIDING FOR THE INCORPORATION OF THE RECITALS; PROVIDING A CUMULATIVE CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE CODICIATION INTO THE CODE OF ORDINANCES; FINDING THAT MEETINGS AT WHICH THIS ORDINANCE WERE PASSED COMPLIED WITH LAW; PROVIDING A PENALTY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Burleson, Texas (“City”), is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the City Council of the City of Burleson has adopted Ordinance B-582 (A0508), being Appendix B - Zoning Ordinance, Code Of Ordinances, City of Burleson, which establishes zoning regulations and districts in accordance with the City's comprehensive land use plan in order to promote health, safety, morals and the general welfare within the City of Burleson; and

WHEREAS, the City Council finds that this ordinance is a “proposed comprehensive zoning change” in that it will adopt a new zoning code that will apply to the entire municipality by amending the current Zoning Ordinance by adopting a new zoning classification district; and

WHEREAS, the City Council finds that the Planning and Zoning Commission of Burleson, Texas, held a public hearing, notice for said hearing having been given not less than ten (10) days before the date set for the hearing by publication in the Fort Worth Star Telegram, Fort Worth, Texas, a newspaper of general circulation in such municipality, and voted 8 to 1 to recommend approval to the City Council of Burleson, Texas, that the ordinance be approved; and

WHEREAS, the City Council finds that the City Council held a public hearing, said notice was given of the further public hearing to consider the advisability of amending the Zoning Ordinance as recommended by the Planning and Zoning Commission, and all citizens and parties at interest were notified that they would have an opportunity to be heard, such notice of the time and place of such hearing having been given at least fifteen (15) days prior to such hearing by publication in the Fort Worth Star Telegram, Fort Worth, Texas, a newspaper of general circulation in such municipality, and by posting such notice to the City’s Internet website; and

WHEREAS, the City Council finds that the City has complied with the notification requirements of the Texas Local Government Code and the Burleson Zoning Ordinance; and

WHEREAS, the City Council finds that all citizens and parties at interest have been given an opportunity to be heard on all the matter of the proposed zoning amendment and the City Council of the City of Burleson, Texas, have found and determined that this amendatory Ordinance should

be enacted since its provisions are in the public interest and will promote the health, safety and welfare of the community.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BURLESON, TEXAS, THAT:

Section 1.

Article III, “Zoning Districts,” of Appendix B, “Zoning,” of the Code of Ordinances, City of Burleson, Texas, is hereby amended by adding Section 80, “HI, heavy and high energy industrial district” to read as follows:

“Section 80. HI, heavy and high energy industrial district.

80-100. Purpose. The HI, heavy and high energy industrial district is established to accommodate industrial development, which represents a type of economic development appropriate for the diversification of the employment base of the city. The range of industry which may be classified as industrial is rapidly expanding as a result of developments in modern technology. To take full advantage of new industrial potential for clean compatible types of industry, performance standards are specified covering noise, smoke, and particulate matter, other air contaminants, hazardous materials, fire and explosive hazard, glare, and vibration. This zoning district also incorporates certain businesses, with operations and facilities that may create energy, or require high energy consumption compared to other businesses in other districts, and, if not properly regulated, may create high-noise levels and other negative impacts. To limit the cumulative impact that these businesses may have on the City, the City has determined that such businesses shall only be permitted within the boundaries of this District. The City will impose conditions on businesses to mitigate impacts from high energy consumption and other environmental impacts that may result from these businesses.

80-105. Primary uses allowed. In the HI, heavy and high energy industrial district no building or land shall be used and no building constructed, reconstructed, altered or enlarged, unless otherwise provided in this ordinance, except for one or more of the following uses:

- (a) Primary uses allowed:
 - Aviation and Passage Terminals
 - Basic Utilities
 - Commercial Parking
 - Heavy Industrial Services
 - Light Industrial Services
 - Manufacturing and Production
 - Office
 - Quick Vehicle Services
 - Radio Frequency Transmission Facilities
 - Rail Lines and Utility Corridors
 - Religious Institutions
 - Retail Sales and Services
 - Self Service Storage

Vehicle Repairs
Warehouse and Freight Movement
Wholesales Sales

80-110. Specific use permit. See section 130, specific use permit. Unless otherwise stated, the following uses require a site plan meeting the requirements of section 131, site plan regulations, and a public hearing is required before a recommendation is made by the planning and zoning commission and action is taken by the city council. In addition, the following minimum conditions must be met. Such conditions may not be construed as conditions precedent to the granting of the specific use permit.

The city council shall consider whether additional landscaping, buffering, screening, noise and glare mitigation, or other general performance standards are required to mitigate noise and/or visual impacts to the community and surrounding neighborhood and properties. Noise barriers shall use sound absorbing, rather than reflective, materials.

(a) Uses allowed with a specific use permit:

Detention Facilities

Mining

Sexually oriented businesses

Waste related collection, transfer or disposal facilities

High Energy Industrial (as listed below):

1. Coal power plant
2. Data centers (greater than 20,000 sq feet or 20 MW of electricity)
3. Electrical power plant
4. Geothermal power plant
5. Hydro/hydro-electric power plant
6. Natural gas plant
7. Nuclear power plant
8. Solar panel field (Electric fields)
9. Thermal power plant
10. Wind farm

80-115. Height requirements. No building shall exceed two stories or 35 feet except as permitted by section 133, special height requirements.

80-120. Development regulations. In the HI, heavy and high energy industrial district, the following regulations apply to all uses.

- (a) Lot size: None.
- (b) Depth of front yard: 40 feet minimum.
- (c) Depth of rear yard adjacent to commercial or industrial districts: 40 feet minimum.
- (d) Depth of rear yard adjacent to residential districts whether separated by an alley or not: 50 feet minimum.
- (e) Width of side yard adjacent to commercial or industrial districts: 20 feet minimum.
- (f) Width of side yard adjacent to residential district whether separated by an alley or not: 25 feet minimum.
- (g) Width of side yard adjacent to side street: 20 feet minimum.
- (h) Width of lot: None.

- (i) Depth of lot: None.
- (j) Buffer: The closest portion of any building or other structure requiring approval of a specific use permit shall be two hundred (200) feet from the nearest boundary of any district allowing residential uses and one hundred (100) feet from the nearest boundary of any retail or commercial zoning district.
- (k) Location criteria for sexually oriented businesses: See Chapter 14, Sections 14-473 and 14-474, Burleson Code of Ordinances.

80-125. Landscaping. Landscaping shall be in compliance with [chapter 86 of the Burleson Code of Ordinances].

80-130. Parking. Parking shall be in compliance with section 134, vehicle parking regulations.

80-135. Off-street loading. Off-street loading shall be in compliance with section 135, off-street loading regulations.

80-140. General performance standards HI, heavy and high energy industrial district. All uses in the HI, heavy and high energy industrial district shall conform in operation, location and construction to the performance standards for noise, odorous matter, toxic and noxious matter, glare, smoke, particulate matter and other air contaminants, fire and explosive or hazardous matter, vibration, open storage and glare as contained in this section.

- (a) *Smoke.* The requirements of the state law and regulations.
- (b) *Particulate matter.* The requirements of the state law and regulations.
- (c) *Odor.* No operation shall permit odors to be released which are detectable at the property line and which offensively affect the sense of smell.
- (d) *Toxic material.* The emission of toxic and noxious materials shall not produce concentrations exceeding ten percent of threshold limit values for toxic materials in industry as set forth in "Threshold Limit Values" for the current year as adopted at the annual meeting of the American Conference of Governmental Industrial Hygienists, at a zone boundary line.
- (e) *Glare.* All artificial light sources shall be shielded so as to prevent direct rays of light from crossing a zoning district boundary line.
- (f) *Vibration.* Any industrial operation or activity which shall cause at any time and at any point along the nearest adjacent property line, earth born vibrations in excess of the limits set forth in the table below are prohibited. Vibrations shall be expressed as resultant displacement in inches.

Frequency (Cycles per Second)	Maximum Displacement (Inches)
Below 10	0.0008
10-20	0.0005
20-30	0.0002
30-40	0.0002
40 and over	0.0001

This tabulation is for steady state vibration; this is defined as continuous vibration in contrast to discrete pulses. Impact vibration, that is, discrete pulses which do not exceed 100 pulses per minute, must not produce in excess of twice (two times) the displacement stipulated above.

(g) *Noise.* At no point, either on the boundary of the zone or at 125 feet from the property line of the plant or operation, whichever distance is greater, shall the sound pressure level of any operation of plant (other than background noises produced by sources not under control of these plant operation such as the operation of motor vehicles or other transportation facilities) exceed the decibel limits in the octave bands designated below:

Octave Band Frequency (Cycles per Second)	Maximum Permitted Sound Level in Decibels Along Residence District Boundaries or 125 Feet from Plant or Operation Lot Line
	<i>Light Industrial</i>
0—75	67
75—150	62
150—300	58
300—600	54
600—1,200	49
1,200—2,400	45
2,400—4,800	41
Above 4,800	37

Sound levels shall be measured with a sound-level meter and associated octave band filter, manufactured and calibrated according to standards prescribed by the American Standards Association. Measurements shall be made using the flat or C network of the sound level meter and the fast meter movement of the octave band analyzer.

Impulsive type noises capable of being so measured, which cause rapid fluctuations of the needle of the sound-level meter must have a variation of no more than plus or minus two decibels. Noises incapable of being so measured, such as those of an irregular and intermittent nature, shall be controlled so as not to become a nuisance to adjacent users.

(h) *Fire hazards.* The storage, use or manufacture of solid materials or products ranging from incombustible to moderate burning is permitted in accordance with applicable city codes and ordinances. The storage, use or manufacture of solid materials or products ranging from free or active burning to intense burning is permitted in accordance with applicable city codes and ordinances provided the following condition is met:

1. Materials or products shall be stored, used or manufactured within completely enclosed buildings having incombustible exterior walls and protected throughout by an automatic fire extinguishing system.

2. The storage, use, or manufacture of flammable liquids or gases which produce flammable or explosive vapors, shall be permitted in [accordance] with (exclusive of storage of finished products in original sealed containers) the city's fire code as interpreted by the city fire marshal.

(i) *Water pollution.* No operation or activity shall discharge or cause to be discharged, liquid or solid waste into public waters unless in conformance with the provisions of the state laws and regulations.

(j) *Liquid or solid waste.* No discharge at any point will be allowed into any public sewer, private sewer disposal system.”

Section 2.

The findings set forth above in the recitals of this Ordinance are incorporated into the body of this Ordinance as if fully set forth herein.

Section 3.

This ordinance shall be cumulative of all provisions of ordinances of the City of Burleson, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed. To the extent that the provisions of the City of Burleson's various development ordinances conflict with this ordinance, the terms of this ordinance shall control.

Section 4.

The terms and provisions of this ordinance shall be deemed to be severable and that if any section, subsection, sentence, clause, or phrase of this ordinance shall be declared to be invalid or unconstitutional, the same shall not affect the validity of any other section, subsection, sentence, clause, or phrase of this ordinance and the remainder of such ordinance shall continue in full force and effect the same as if such invalid or unconstitutional provision had never been a part hereof.

Section 5.

Any complaint, notice, notice of violation, action, cause of action, hearing request, appeal, or claim which prior to the effective date of this Ordinance that has been initiated or arisen under or pursuant to any other ordinance(s) shall continue to be governed by the provision of that ordinance or ordinances, and for that purpose that ordinance or ordinances shall be deemed to remain and shall continue in full force and effect.

Section 6.

That it is the intention of the City Council and is hereby ordained that the provisions of this ordinance shall become a part of the Code of Ordinances of the City of Burleson, and that the sections of this ordinance may be renumbered or relettered to accomplish such intention.

Section 7.

That it is hereby officially found and determined that the meetings at which this ordinance is passed were open to the public and that public notice of the time, place, and purpose of said meetings were given as required by law.

Section 8.

Any person, firm, association of persons, company, corporation, or their agents, servants, or employees violating or failing to comply with any of the provisions of this article shall be fined, upon conviction, not less than one dollar (\$1.00) nor more than two thousand dollars (\$2,000.00), and each day any violation of noncompliance continues shall constitute a separate and distinct offense. The penalty provided herein shall be cumulative of other remedies provided by State Law, and the power of injunction as provided in V.T.C.A. Local Government Code 54.012 and as may be amended, may be exercised in enforcing this article whether or not there has been a complaint filed.

Section 9.

Pursuant to Section 36 of the Charter of the City of Burleson, that this ordinance shall take effect after its passage and publication, and that the City Secretary is hereby directed to give notice of the passage of this ordinance by causing the caption or title and the penalty clause of this ordinance to be published once in a newspaper of general circulation in the city and on the city's website.

AND IT SO ORDAINED.

PASSED AND APPROVED: the _____ day of _____, 20_____.

First Reading: the _____ day of _____, 20_____.

Final Reading: the _____ day of _____, 20_____.

Chris Fletcher, Mayor
City of Burleson, Texas

ATTEST:

Amanda Campos, City Secretary

APPROVED AS TO FORM & LEGALITY:

E. Allen Taylor, Jr., City Attorney