

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, AMENDING SUBPART 26, "RESTAURANT," OF SUBSECTION 1.4, "CONDITIONAL DEVELOPMENT STANDARDS," OF SECTION 1, "USE OF LAND AND BUILDINGS," OF CHAPTER 3, "PERMITTED USES AND DEFINITIONS," OF THE TOWN'S ZONING ORDINANCE; AMENDING SUBPARTS 1, "PERIMETER REQUIREMENTS," AND 2, "INTERIOR PARKING REQUIREMENTS," OF SUBPART C, "NON-RESIDENTIAL LANDSCAPED AREA REQUIREMENTS," OF SUBSECTION 2.6, "LANDSCAPE AREA REQUIREMENTS," OF SECTION 2, "LANDSCAPING," OF CHAPTER 4, "DEVELOPMENT REQUIREMENTS," OF THE TOWN'S ZONING ORDINANCE; REPEALING EXISTING SUBSECTION 4.9, "LOADING SPACE REQUIREMENTS," OF SECTION 4, "PARKING, CIRCULATION, AND ACCESS," OF CHAPTER 4, "DEVELOPMENT REQUIREMENTS," OF THE TOWN'S ZONING ORDINANCE AND REPLACING IT WITH A NEW SUBSECTION 4.9, "LOADING SPACE REQUIREMENTS"; AMENDING SECTION 4, "PARKING, CIRCULATION, AND ACCESS," OF CHAPTER 4, "DEVELOPMENT REQUIREMENTS," OF THE TOWN'S ZONING ORDINANCE BY ADDING A NEW SUBSECTION 4.10 ENTITLED "STACKING REQUIREMENTS"; AMENDING SUBPART A OF SUBSECTION 5.2, "LOCATION OF REQUIRED SCREENING," OF SECTION 5, "SCREENING FENCES AND WALLS," OF CHAPTER 4, "DEVELOPMENT REQUIREMENTS," OF THE TOWN'S ZONING ORDINANCE; AMENDING SUBSECTION 9.11, "ADJACENCY OF CERTAIN USES TO RESIDENTIAL ZONING," OF SECTION 9, "ADDITIONAL AND SUPPLEMENTAL," OF CHAPTER 4, "DEVELOPMENT REQUIREMENTS," OF THE ZONING ORDINANCE OF THE TOWN OF PROSPER; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVINGS, AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the Town Council of the Town of Prosper, Texas (the "Town Council"), has investigated and determined that the Zoning Ordinance should be amended; and

WHEREAS, after public notice and public hearing as required by law, the Planning & Zoning Commission of the Town of Prosper, Texas, has recommended amending the Town's Zoning Ordinance to encompass those amendments as set forth herein; and

WHEREAS, after public notice and public hearing as required by law, and upon due deliberation and consideration of the recommendation of said Planning & Zoning Commission and of all testimony and information submitted during said public hearing, the Town Council of the Town of Prosper, Texas, has determined that it is in the public's best interest and in furtherance of the health, safety, morals, and general welfare of the citizens of the Town to amend the Town's Zoning Ordinance as set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, THAT:

SECTION 1

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

SECTION 2

From and after the effective date of this Ordinance, existing Subpart 26, "Restaurant," of Subsection 1.4, "Conditional Development Standards," of Section 1, "Use of Land and Buildings," of Chapter 3, "Permitted Uses and Definitions," of the Town's Zoning Ordinance, is hereby amended to read as follows:

"CHAPTER 3 PERMITTED USES

Section 1. USE OF LAND AND BUILDINGS

* * *

1.4 Conditional development standards.

* * *

26. Restaurant.

- a) A Restaurant is permitted by Specific Use Permit in the NS Zoning District and is permitted by right in the O, DTR, R, DTC, C, and CC Zoning Districts subject.
- b) Restaurants with a drive-through are only permitted in the R, C, and CC Zoning Districts upon approval of a Specific Use Permit. Restaurants with drive-throughs shall not be developed on adjacent lots.
- c) Restaurants are only permitted in the O Zoning District, if the subject property is located along a roadway classified as a major or minor thoroughfare as defined by the Thoroughfare Plan.
- d) The distance requirement from any residential zoning district as established in Section 9.11 of Chapter 4 applies to restaurants with a drive-through.
- e) Restaurants that sell Alcoholic Beverages for on-premise consumption shall be subject to compliance with the Texas Alcoholic Beverage Code, as amended, and any applicable local option elections.
- f) A Restaurant that sells Alcoholic Beverages for on-premise consumption shall not be located within the following:
 1. Three hundred feet from a church, public hospital, public school and/or private school. However, Alcoholic Beverage Sales may be located within 300 feet of a private school if the holder of a license or permit holds a food and beverage certificate covering a premise that is located within 300 feet of a private school; or
 2. One thousand feet from a private school if the Town Council receives a request for this additional spacing requirement from the board of the private school, and the

Town Council adopts such additional spacing requirements by resolution. Measurement for the distance between a Restaurant or Cafeteria where Alcoholic Beverages for on-premise consumption are sold and a church or public hospital shall be along the property lines of the street fronts, from front door to front door, and in a direct line across intersections.

- g) Measurement for the distance between a Restaurant where Alcoholic Beverages for on-premise consumption are sold and a public and/or private school shall be:
 - 1. In a direct line from the Property Line of the public and/or private school to the Property Line of the place of business, and in a direct line across intersections; or
 - 2. If the Restaurant that sells Alcoholic Beverages for on-premise consumption is located on or above the fifth story of a multistory building, in a direct line from the Property Line of the public and/or private school to the Property Line of the place of business, in a direct line across intersections, and vertically up the building at the Property Line to the base of the floor on which the Restaurant or Cafeteria is located.
- h) If a Restaurant receives 75 percent or more of its gross revenue on a quarterly basis from the sale or service of Alcoholic Beverages for on-premise consumption, the use will no longer qualify as a Restaurant and will be classified and regulated by the Town as an Alcoholic Beverage Establishment under the Zoning Ordinance.
- i) There shall be no variances considered with regard to the regulations set forth herein.”

SECTION 3

From and after the effective date of this Ordinance, existing Subparts 1, “Perimeter requirements,” and 2, “Interior Parking Requirements,” of Subpart C, “Non-residential Landscaped Area Requirements,” of Subsection 2.6, “Landscape Area Requirements,” of Section 2, “Landscaping,” of Chapter 4, “Development Requirements,” of the Town’s Zoning Ordinance are hereby amended to read as follows:

“CHAPTER 4 DEVELOPMENT REQUIREMENTS

* * *

SECTION 2. LANDSCAPING

* * *

2.6 Landscape area requirements.

* * *

C. Non-residential landscaped area requirements. These standards apply to all non-residential uses. Any area within a PD containing landscaping standards shall comply with the standards set forth in the PD district.

- 1. Perimeter requirements:

- a. A landscaped area consisting of living trees (as specified below), turf, or other living ground cover and being at least 25 feet in width measured from the property line interior to the property shall be provided adjacent to and outside of the right-of-way on all properties located adjacent to a major or minor thoroughfare as defined by the Town of Prosper Thoroughfare and Circulation Designs Standards.
 - i. The landscaped area may be reduced to 15 feet for the portion of a property adjacent to a collector or equivalent street as defined by the Town of Prosper Thoroughfare and Circulation Designs Standards.
 - ii. The landscaped area shall be increased to 30 feet for properties adjacent to Preston Road, University Drive, and Dallas Parkway.
 - iii. One large tree, three-inch caliper minimum per 30 linear feet of roadway frontage shall be planted within the required landscape area. The trees may be planted in groups with appropriate spacing for species.
 - iv. In the DTO District, one large tree, three inch caliper minimum per 30 linear feet of roadway frontage, excluding the width of driveways at the property line, shall be planted within the required landscape area. Where the width of the roadway frontage is greater than 80 feet, excluding the width of driveways at the property line, the number of large trees may be planted at a rate of one, three-inch large tree per 40 feet of roadway frontage, in lieu of the required one tree per 30 linear feet. The trees may be planted in groups with appropriate spacing for species. In the DTO District, the substitution of three small, ornamental trees for one large tree shall not be permitted.
 - v. A minimum of 15 shrubs with a minimum size of five gallons each will be planted in the landscaped area for each 30 feet of linear frontage.
 - vi. Parking abutting the landscape area shall be screened from the adjacent roadway. The required screening may be accomplished with shrubs or earthen berms.
 - vii. Unless there is parking adjacent to the landscape area, shrubs are not required in the landscape area in the DTO District.
 - viii. Required landscape areas adjacent to public streets shall be exclusive easements or other restrictions which could inhibit planting, growth, or permanence of landscaping.
 - ix. Berms ranging in height from three feet to six feet, and an overall minimum average of four and a half feet, shall be required along US 380, Frontier Parkway/FM 1461/Parvin Road, Custer Road/FM 2478, Preston Road, Dallas Parkway, and FM 1385.
- b. Where a non-residential development is adjacent to the property line of residential zoned parcels or areas shown as residential on the future land use plan, one large tree, three inch caliper minimum, will be planted on 30 foot centers in a 15 foot landscape area, with the following exceptions:

- i. Evergreen trees, three-inch caliper minimum, that will reach a minimum of 15 feet in height, shall be planted on 20 foot centers within the 15 foot landscape area where truck docks or loading spaces are adjacent to residentially zoned property or areas shown as residential on the future land use plan.
 - ii. Evergreen trees, three-inch caliper minimum, that will reach a minimum of 15 feet in height, shall be planted on 20 foot centers within the 15 foot landscape area on any lot containing a drive-through restaurant, drive-in restaurant, and/or automotive use as defined in Chapter 4, Section 9.11(A) that is adjacent to a residential zoning district or area shown as residential on the future land use plan. All landscape screening materials shall be maintained in a manner to provided the intended screening.
 - iii. In the DTO District, regardless of the adjacent use, zoning or future land use designation; the width of perimeter landscape area adjacent to the property line may be reduced to a minimum of five feet.
 - iv. In the DTO District, in lieu of the required large trees, one small (ornamental) tree shall be planted 30 foot centers along the adjacent property lines."
 - c. Where a non-residential development is adjacent to the property line of parcels zoned for uses other than residential or parcels not shown as residential on the future land use plan:
 - i. A five foot wide landscape area is required.
 - ii. If the property line is the centerline of a fire lane or drive aisle, the five foot wide landscape area will begin at the edge of the lane/aisle. If the drive aisle or fire lane only allows access to parking spaces, the landscape area may be eliminated or moved at the discretion of the town.
 - iii. The five foot wide landscape area may be eliminated for a building where the building is attached to another building and the attached buildings are shown on an approved site plan.
 - iv. One small tree and one five-gallon shrub shall be planted every 15 linear feet. These trees and shrubs may be clustered in lieu of placing them every 15 feet.
 - v. All uses containing a drive-in, drive-through, or that require stacking shall provide a ten foot wide landscape area along the perimeter of the property. If the property line is the centerline of a fire lane or drive aisle, the ten foot wide landscape area will begin at the edge of the lane/aisle. The landscape area shall contain a minimum three-inch caliper evergreen trees planted 15 feet on-center with minimum five gallon shrubs planted three feet on center.
2. Interior parking requirements. Any non-residential parking area that contains 20 or more parking spaces shall provide interior landscaping, in addition to the required landscaped edge, as follows:

- a. Fifteen square feet of landscaping for each parking space shall be provided within the paved boundaries of the parking lot area.
- b. Where an existing parking lot area is altered or expanded to increase the number of spaces to 20 or more, interior landscaping shall be provided on the new portion of the lot in accordance with this section.
- c. All landscaped areas shall be protected by a raised six inch concrete curb. Pavement shall not be placed closer than four feet from the trunk of a tree unless a town approved root barrier is utilized.
- d. Landscaped islands shall be located at the terminus of all parking rows, and shall contain at least one large tree, three inch caliper minimum, with no more than 15 parking spaces permitted in a continuous row without being interrupted by a landscaped island. Where there is a minimum eight foot wide landscaped median between two rows of head-in parking, landscaped islands are required every 20 spaces.
- e. Landscaped islands shall be a minimum of 160 square feet, not less than nine feet wide and a length equal to the abutting space.
- f. Subject to approval by the town, islands may be grouped to form one large island.
- g. There shall be at least one large tree, three-inch caliper minimum, within 150 feet of every parking space. This minimum distance may be expanded with town approval in the event that required islands are grouped to form larger islands.
- h. Required parking lot trees may be consolidated into groups under the following conditions:
 - i. The number of required trees is one per ten parking spaces.
 - ii. Consolidated tree islands require 180 square feet per tree.
 - iii. The maximum run of parking spaces is increased from 15 to 30.
 - iv. This consolidation does not include the tree islands at the end of a row of parking or along perimeter parking rows that face a drive aisle or street.
 - v. A consolidated tree island shall not be located closer than five parking spaces from an end of row tree island.
- i. All uses containing a drive-in, drive-through, or that require stacking shall be subject to the following standards:
 - i. A minimum five foot wide landscape island shall be constructed around the outer edge of the drive-through lane(s) along the outer edge of the escape lane, extending from the point entry to the exit.

- ii. The landscape island shall contain minimum three inch caliper evergreen trees planted 15 feet on-center with minimum five gallon shrubs planted three feet on center. Ornamental trees may be used in place of a portion of shrubs to create a mixture of species and types of vegetation. If the landscape island is located on the perimeter of the property, perimeter landscaping requirements may be applied towards this requirement.

* * *

SECTION 4

From and after the effective date of this Ordinance, existing Subsection 4.9, "Loading Space Requirements," of Section 4, "Parking, Circulation, and Access," of Chapter 4, "Development Requirements," of the Town's Zoning Ordinance is hereby repealed and replaced with a new Subsection 4.9, Loading Space Requirements," to read as follows:

"CHAPTER 4 DEVELOPMENT REQUIREMENTS

* * *

SECTION 4. PARKING, CIRCULATION, AND ACCESS

* * *

4.9 Loading space requirements.

- A. A minimum of one loading space shall be required for big box uses. Loading spaces for other non-residential uses may be required as determined by the Director of Development Services, if it is determined the use or configuration of the site warrants such.
- B. All non-residential uses providing loading spaces shall provide such loading spaces in accordance with the following requirements:
 - 1. A loading space shall consist of an area of a minimum of 12 feet wide and 30 feet long.
 - 2. All drives and approaches shall provide adequate space and clearances to allow for the maneuvering of trucks. Each site shall provide a designated maneuvering area for trucks. (See Chapter 5, Section 2.3, Illustration H)."

SECTION 5

From and after the effective date of this Ordinance, Section 4, "Parking, Circulation, and Access," of Chapter 4, "Development Requirements," of the Town's Zoning Ordinance is amended by adding a new Subsection 4.10, "Stacking Requirements," to read as follows:

"CHAPTER 4 DEVELOPMENT REQUIREMENTS

* * *

SECTION 4. PARKING, CIRCULATION, AND ACCESS

* * *

4.10 Stacking Requirements.

1. Stacking Space Definition

Stacking spaces provide the ability for vehicles to queue on site prior to receiving a service.

2. Stacking Space Size and Location

- a. A stacking space shall be a minimum of nine feet wide and 20 feet long and shall not be located within or interfere with any other circulation driveway, parking space, or maneuvering aisle.
- b. Stacking spaces shall be provided behind the vehicle bay door, middle of the service window, or middle of the service island, whichever is applicable.
- c. The stacking/drive-through lanes shall not be placed between the building and the adjacent public right-of-way.

3. Number of Required Stacking Spaces (All Districts)

In all zoning districts, at the time any building or structure is erected or altered, stacking spaces shall be provided in the number and manner set forth in the following list of property uses:

- **Automated teller machine (ATM):** Three stacking spaces.
- **Automobile oil change and similar establishments:** Three stacking spaces per bay.
- **Car wash:** Three stacking spaces for drive-through, or one stacking space per bay.
- **Dry cleaning, pharmacy, or other retail establishments with a drive-through:** Three stacking spaces for first service window.
- **Financial institution:** Five stacking spaces per window or service lane.
- **Kiosk (with food service):** Five stacking spaces for first window, order board, or other stopping point.
- **Kiosk (without food service):** Two stacking spaces for first window, order board, or other stopping point.
- **Restaurant with drive-through:** Five stacking spaces for first window, order board, or other stopping point.

4. Single Stacking Space Required after the Final Window, Order Board, or Stopping Point

A single stacking space shall be provided after the final window, order board, or stopping point to allow vehicles to pull clear of the transaction area prior to entering an intersecting on-site driveway or maneuvering aisle.

5. Setback Requirement

Buildings and other structures shall be setback a minimum of ten feet from the back of the curb of the intersecting driveway or maneuvering aisle to provide adequate visibility and to allow vehicles to safely exit drive-through lanes and escape lanes prior to merging into intersecting driveways or maneuvering aisles.

6. Escape Lane Requirement for Drive-Through Facilities

- a. An escape lane shall be provided for any use containing a drive-through facility.
- b. An escape lane shall be provided in proximity to the first stopping point for any use containing a drive-through facility.
- c. An escape lane shall be nine (9) feet in width and shall provide access around the entirety of the drive-through facility from the point of entry, around the stacking lane, and to the exit.

7. Landscape Requirements

Landscaping shall comply with the requirements set forth in Chapter 4, Section 2.6(C).”

SECTION 6

From and after the effective date of this Ordinance, Subpart A of Subsection 5.2, “Location of Required Screening,” of Section 5, “Screening Fences and Walls,” of Chapter 4, “Development Requirements,” of the Town’s Zoning Ordinance is hereby amended to read as follows:

“CHAPTER 4 DEVELOPMENT REQUIREMENTS

SECTION 5. SCREENING FENCES AND WALLS

* * *

5.2 Location of required screening.

- A. When a boundary of a multifamily, institutional, or non-residential use sides or backs to a property that is zoned or designated on the future land use plan for residential (non-multifamily) uses, or when any institutional or non-residential use sides or backs to a MF District, a solid screening wall or fence of not less than six feet nor more than eight feet in height shall be erected on the property line separating these uses. The purpose of the screening wall or fence is to provide a visual barrier between the properties.

Any lot a containing drive-through restaurant, drive-in restaurant, and/or automotive use, as defined in Chapter 4, Section 9.11(A), and that is adjacent to a residentially zoned property or areas shown as residential on the future land use plan, shall have a screening wall eight feet in height and shall be maintained in a manner to provide the intended screening.

The owner of such property of the lesser restrictive use shall be responsible for and shall build the required wall or fence on his property line dividing his property from the more restrictive zoning district. In cases where the Planning and Zoning Commission finds this requirement to be better met by an irrigated living screen, the same may be substituted for the screening wall after a landscape plan has been prepared to demonstrate equal visual screening.

A screening wall or fence required under the provisions of this section, under a specific use permit, a Planned Development District, or other requirement shall be constructed of clay-fired brick masonry units or other suitable permanent materials which do not contain openings constituting more than 40 square inches in each one square foot of wall or fence surface, and the surface of such wall or fence shall constitute a visual barrier. All wall or fence openings shall be equipped with gates equal in height and screening characteristics to the wall or fence. Concrete masonry units, poured in place concrete, tilt-up concrete, or concrete panels may be used upon approval by the Planning and Zoning Commission.

Properties zoned for the DTC, DTR, or DTO District are only required to provide screening along property lines that are adjacent to properties shown as residential on the future land use plan. The screening shall consist of an eight foot cedar board-on-board wooden fence constructed in accordance with the fence ordinance as it exists or may be amended. In the DTO District, the height of the fence may be reduced to six feet.

* * *

SECTION 7

From and after the effective date of this Ordinance, Subsection 9.11, “Adjacency of Certain Uses to Residential Zoning,” of Section 9, “Additional and Supplemental,” of Chapter 4, “Development Requirements,” of the Zoning Ordinance of the Town of Prosper Texas, is hereby amended to read as follows:

“CHAPTER 4 DEVELOPMENT REQUIREMENTS

SECTION 9. ADDITIONAL AND SUPPLEMENTAL

* * *

9.11 Adjacency of certain uses to residential zoning.

- A. All buildings, gasoline pump islands, vacuums, outdoor speakers, gasoline or fuel storage tanks, air and water dispensers, and other structures in conjunction with any automotive use shall be located a minimum of 200 feet from any residential zoning district or areas shown as residential on the future land use plan. No service bay shall face a residential zoning district or areas shown as residential on the future land use plan. An automotive use shall be defined as the sales, leasing, renting, servicing, repair, or washing of automobiles, boats, motorcycles, trucks, or any other motor vehicle.

- B. All buildings, structures, and outdoor speakers used in conjunction with any drive-through restaurant or drive-in restaurant shall be located a minimum of 200 feet from any residential zoning district or areas shown as residential on the future land use plan.
- C. Any lot containing a drive-through restaurant, drive-in restaurant, and/or an automotive use as defined in Chapter 4, Section 9.11(A) and that is adjacent to a residentially zoned property or areas shown as residential on the future land use plan shall comply with the landscape requirements set forth in Chapter 4, Section 2.6(C) and screening wall requirements set forth in Chapter 4, Section 5.2.
- D. The requirements listed in Chapter 4, Section 9.11(A) and 9.11(B) shall not apply to a drive-through restaurant, drive-in restaurant, and/or an automotive use within 200 feet of a residential zoning district that is separated from the residential area by an existing or future major thoroughfare identified on the town's thoroughfare plan.”

SECTION 8

Should any section, subsection, sentence, clause, or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The Town hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional or invalid.

SECTION 9

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution from being commenced for any violation if occurring prior to the repeal of the Ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 10

Any person, firm, corporation, or business entity violating this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed the sum of two thousand dollars (\$2,000.00), and each and every day such violation shall continue shall constitute a separate offense.

SECTION 11

This Ordinance shall become effective after its adoption and publication as required by law.

DULY PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 9TH DAY OF JANUARY, 2024.

David F. Bristol, Mayor

ATTEST:

Michelle Lewis Sirianni, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney