

CITY OF DRIPPING SPRINGS

ORDINANCE No. 2018-25

AN ORDINANCE OF THE CITY OF DRIPPING SPRINGS, TEXAS AMENDING THE CODE OF ORDINANCES, CHAPTER 28, ARTICLE 28.04: SITE DEVELOPMENT; AND EXHIBIT A: SUBDIVISION ORDINANCE; AND PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT; ENACTMENT; REPEALER; SEVERABILITY; CODIFICATION; EFFECTIVE DATE; AND PROPER NOTICE & MEETING.

WHEREAS, the City of Dripping Springs (the “City”) City Council seeks to promote orderly and responsible development of land within the incorporated municipal boundaries (“city limits”) and extraterritorial jurisdiction (“ETJ”); and

WHEREAS, pursuant to Texas Local Government Code Section 51.001, the City has general authority to adopt an ordinance or policy regulation that is for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, pursuant to Chapters 211 and 212 of the Texas Local Government Code, the City has the authority to regulate land development and construction; and

WHEREAS, the City seeks to amend the Site Development Ordinance, Chapter 28, Article 28.04; and

WHEREAS, the City seeks to amend the Site Development Ordinance, Chapter 28, Exhibit A, Sections 1.6: Waivers and 16: Building Lines; and

WHEREAS, the purpose of the Site Development Ordinance is to provide for the orderly, safe, and healthful development within the city limits and ETJ of the City, and to promote the health, safety, and general welfare of the community; and

WHEREAS, the amendments herein are intended to accommodate the growth of the City by giving the City Building Official the authority to approve residential pool encroachments into setbacks where certain criteria are met; and

WHEREAS, after notice and hearing required by law, a public hearing was held before the Dripping Springs Planning and Zoning Commission on September 25, 2018 to consider the proposed amendments and the Planning and Zoning Commission recommended approval of the proposed amendments; and

WHEREAS, after public hearing held by the City Council on October 9, 2018 the City Council voted to accept the recommendation of the Planning and Zoning Commission; and

WHEREAS, the City Council finds that it is necessary and proper for the good government, peace or order of the City of Dripping Springs to adopt an ordinance amending Chapter 28: Subdivisions and Site Development.

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

1. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

2. ENACTMENT

Chapter 28, Article 28.04 of the Dripping Springs Code of Ordinances is hereby amended to read in accordance with *Attachment "A"* which is attached hereto and incorporated into this Ordinance and the City Code for all intents and purposes. Chapter 28, Exhibit A, Section 1.6 is hereby amended to be read in accordance with *Attachment "B"* which is attached hereto and incorporated into this Ordinance and the City Code for all intents and purposes. Underlined text shall be added and struck-through text shall be deleted as indicated in *Attachments "A" and "B."*

3. REPEALER

All ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

4. SEVERABILITY

Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

5. CODIFICATION

The City Secretary is hereby directed to record and publish the attached rules, regulations and policies in the City's Code of Ordinances as authorized by Section 52.001 of the Texas Local Government Code.

6. EFFECTIVE DATE

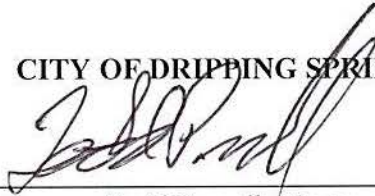
This Ordinance shall be effective immediately upon passage and publication.

7. PROPER NOTICE & MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED & APPROVED this, the 16th day of October 2018, by a vote of 4 (ayes) to 1 (nays) to 0 (abstentions) of the City Council of Dripping Springs, Texas.

CITY OF DRIPPING SPRINGS:



Todd Purcell, Mayor

ATTEST:



Andrea Cunningham, City Secretary

City of Dripping Springs

CODE OF ORDINANCES

CHAPTER 28: SUBDIVISIONS AND SITE DEVELOPMENT

ARTICLE 28.04: SITE DEVELOPMENT

Sec. 28.04.022 Approval process of pool encroachment waiver

(a) City staff review. Upon official submission of a complete application that requests a pool waiver encroachment, the city shall commence review of the request by forwarding a copy of the application to the city building official and city engineer. The city building official and city engineer shall review the application and shall ascertain its compliance with these regulations. Following city staff review of the plan and supporting documents, and following discussions with the applicant on any revisions deemed advisable and the kind and extent of the pool improvements to be installed, the applicant shall resubmit additional copies of the corrected plan to the city building official within sixty (60) calendar days following the date on which the applicant received official notification of the completion of the review by the city building official and city engineer.

(b) Action by city building official.

(1) The city building official may:

(A) Deem the pool encroachment approved;

(B) Deem the pool encroachment denied; or

(C) Make an initial determination and refer the matter to the P&Z and council.

(2) If the city building official approves the pool encroachment waiver, no approval by the P&Z or city council is required. Pool encroachment waiver requests must meet the requirements of Chapter 28, Exhibit A, Section 1.6 and this section in order to be reviewed and approved by the city building official.

(3) The city building official may approve applications for the installation of pools within setback area on a property so long as the pool does not encroach within five (5) feet of a neighboring property. The city building official shall not administratively approve an encroachment by a pool pump or other pool equipment, other than the pool itself, into the setback. Any application for a pool encroachment requires notification as outlined in Section 1.6.2.1 of Exhibit A: Chapter 28 of the Subdivision Ordinance. At the city building official's discretion a request for a pool encroachment waiver may be referred to the P&Z and council for approval or denial. In making the decision to refer a request for a pool encroachment waiver to the P&Z and council, the building official may consider the following factors:

(A) Amount of impervious cover proposed;

(B) Proximity to nearby developed properties; and

(C) Anticipated impact of project or encroachment on neighbors.

(c) Denial by the city building official. The city building official's denial of a pool encroachment may be reviewed by the P&Z and city council through the review process outlined herein. If the applicant desires to appeal the city building official's denial then the applicant shall submit the denial and application to the city administrator no later than seven (7) calendar days prior to the P&Z meeting. Copies of the denied application resubmitted to the city less than seven days prior to the meeting date shall not be accepted or forwarded to the P&Z.

(i) Action by P&Z and city council.

(1) Without regard to the final action by the city building official, the P&Z shall review an application for a pool encroachment waiver upon receipt of written request from:

(A) The mayor;

(B) Two (2) city council members;

(C) The P&Z chairman; and/or

(D) Three (3) P&Z members.

(1) All applications reviewed by the P&Z under this subsection shall then be referred to the city council for approval or denial.

(2) The city council shall consider an application for a pool encroachment when required by this section or Chapter 28, Exhibit A, Subdivision Ordinance, Section 1.6.

(4) Once the appeal is received, the city building official shall schedule consideration of the pool encroachment waiver on the regular agenda of the P&Z, within thirty (30) days after the submission is received, or, in the case of an incomplete submission, after the submission is deemed complete. The P&Z shall review the appeal and shall recommend approval, approval subject to certain conditions, or disapproval of the pool encroachment. If the P&Z recommends approval, with or without conditions, of the plan, then it will be forwarded to the city council for consideration. If the P&Z recommends disapproval of a plan application, the P&Z shall state such disapproval and the reasons thereof.

(5) The applicant or property owner may appeal such decision of the P&Z to the city council by filing a written notice of appeal in the office of the city administrator no later than ten (10) calendar days after the date upon which the P&Z denied the application. The notice of appeal shall set forth in clear and concise fashion the basis for the appeal. The city council shall consider the appeal at a public meeting no later than thirty (30) calendar days after the date upon which the notice of appeal was filed. The city council may override the decision of the P&Z by vote of the majority of the councilmembers present. The city council may also, where appropriate, remand the plan application back to the P&Z for reconsideration if it believes that there is a compelling reason to do so, such as the introduction of significant new facts or testimony. The city council shall determine final approval or disapproval of all plan appeals.

City of Dripping Springs

CODE OF ORDINANCES

**CHAPTER 28: SUBDIVISIONS AND
SITE DEVELOPMENT**

EXHIBIT A: SUBDIVISION ORDINANCE

SECTION 1. GENERAL PROVISIONS

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1.6. Waivers

1.6.1. Presumption. There shall be a presumption against waivers.

1.6.2. General. Where the City's Planning & Zoning Commission (P&Z) recommends, and the City Council finds, that undue hardships will result from strict compliance with a certain provision(s) of this Chapter, or where the purposes of these regulations may be served to a greater extent by an alternative proposal, the City may approve a waiver from any portion of these regulations so that substantial justice may be done and the public interest is secured, provided that the waiver shall not have the effect of nullifying the intent and purpose of these regulations, and further provided that the City Council shall not approve a waiver unless it shall make findings based upon the evidence presented to it in each specific case that:

- (a) Granting the waiver will not be detrimental to the public safety, health or welfare, and will not be injurious to other property or to the owners of other property, and the waiver will not prevent the orderly subdivision of other property in the vicinity; and
- (b) The conditions upon which the request for a waiver is based are unique to the property for which the waiver is sought, and are not applicable generally to other property; and
- (c) Because of the particular physical surroundings, shape and/or topographical conditions of the specific property involved, a particular hardship to the property owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations is carried out; and
- (d) The waiver will not in any manner vary the provisions of the Zoning Ordinance or Comprehensive Plan, or any other adopted plan(s) or ordinance(s) of the City; and
- (e) An alternate design will generally achieve the same result or intent as the standards and regulations prescribed herein; and
- (f) The waiver will enable the applicant to preserve more native trees, provide more open space, or ensure more wildlife preservation than would be possible complying with the strict mandates of this Chapter.

Such findings of the City Council, together with the specific facts upon which such findings are based, shall be incorporated into the official minutes of the City Council meeting at which a waiver is considered. A waiver from any provision of this Chapter may be granted only when

in harmony with the general purpose and intent of this Chapter so that the public health, safety and welfare may be secured and substantial justice done. Pecuniary hardship to the applicant, property owner or developer, standing alone, shall not be deemed sufficient to constitute undue hardship.

1.6.2.1 Pool Encroachment Waivers.

(a) A request in a site plan or building permit to allow a private swimming pool to encroach into a setback shall be reviewed administratively by the building official based on the criteria in Section 28.04.011. The building official shall not grant an encroachment that extends within five (5) feet of the adjoining property line. The submission and appeal procedure for application for pool encroachments can be found in Section 28.04.011. The city building official shall not approve an encroachment into the setback by a pool pump or other pool equipment.

(b) Notice of waiver: Notice must be distributed no more than thirty (30) nor less than fifteen (15) days after a completed application including a pool encroachment waiver request has been submitted to the city. This notice shall be distributed as follows:

(1) Delivery to all property owners immediately adjacent to the periphery of the land subject to the site development permit application.

(2) Erection of weather-resistant signs on the property under application for the purposes of advertising said permit.

(3) Notice of waiver request shall be placed on the city website.

(4) Notice for a waiver request for a pool encroachment shall be separate from any notice for a related permit that includes the pool encroachment.

(c) If any written protest related to the pool encroachment is received from any property owner who is immediately adjacent to the periphery of the land subject to the application, the building official shall refer the application to the Planning and Zoning Commission and the City Council as outlined in Section 28.04.011.

1.6.3. Criteria. Where the City Council finds that the imposition of any development exaction pursuant to these regulations exceeds reasonable benefit to the property owner, or is so excessive as to constitute confiscation of the tract to be platted, it may approve a full or partial, at its discretion, waiver to such requirements, so as to prevent such excess.

1.6.4. Conditions. In approving a waiver, the City Council may require such conditions as will, in its judgment, secure substantially the purposes described herein. The applicant's willingness to have the tract annexed into the city limits may be contemplated as a condition, when possible and appropriate, as determined by the City Council.

1.6.5. Procedures:

(a) An application for a waiver shall be submitted in writing by the property owner before the plat is submitted for the consideration of the P&Z. The application for waiver must be submitted not less than thirty (30) days prior to the P&Z meeting at which the request will be considered.

(b) The application shall state fully the grounds for the application, and all of the facts relied upon by the applicant.

(c) Where a hardship is identified during concept plan review pursuant to the Zoning Ordinance or during subdivision plat review pursuant to this Chapter which requires issuance of a waiver from a provision in this Chapter, the P&Z may recommend a conditional (or

temporary) waiver from that provision in this Chapter in conjunction with concept plan or plat approval by the City Council. A conditional or temporary waiver from this Chapter shall receive final approval along with a Preliminary Plat provided that the Preliminary Plat conforms to the concept plan, and that no new information or reasonable alternative plan exists which, at the determination of the City Council, voids the need for a waiver/suspension. All waivers shall have final approval or disapproval by the City Council.

1.6.6. Criteria for Waivers for Street Exactions. Where the City Council finds that the imposition of any dedication or construction requirement for streets pursuant to these regulations exceeds reasonable benefit to the property to be platted, it may approve waivers for such requirements so as to prevent such excess. In order to qualify for a waiver under this Section, the property owner shall demonstrate that the costs of right-of-way dedication and construction of non-local streets imposed pursuant to these regulations substantially exceeds the incremental costs of providing land and transportation improvements necessary to offset the additional traffic impacts generated by, or attributable to, the development upon the transportation network serving the property, including that which may be generated by or attributed to other phases to be platted in the future.

1.6.7. Payment of Indebtedness. No person who owes delinquent taxes, delinquent paving assessments, delinquent fees, or any other delinquent debts or obligations to the City of Dripping Springs, and which are directly attributable to a piece of property, shall be allowed to receive approval for any plat or replat until the taxes, assessments, debts or obligations directly attributable to said property and owed by the property owner or a previous owner, shall have been first fully discharged by payment, or until an arrangement satisfactory to the City Administrator has been made for the payment of such debts or obligations. It shall be the applicant's responsibility to provide evidence or proof that all taxes, assessments, debts or obligations have been paid at the time of submission for any application for approval under this Chapter.

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SECTION 16. BUILDING LINES

16.1. Minimum Building Setback Lines

Front, rear, side and street side building lines shall be shown on a concept plan and on any type of plat for all lots, and shall be consistent with the Zoning Ordinance requirements for the district in which the development is located (if subject to the City's zoning regulations) and with any other applicable City ordinance, respectively. For property that is not subject to the City's zoning regulations, such as property that lies within the City's ETJ, the minimum front building line (for residential and nonresidential lots) shall be ten feet (10) and the minimum rear and side building lines (for residential and nonresidential lots) shall be five feet (5').

16.2. Encroachments

No person shall construct an auxiliary structure or building, porch, roof, or swimming pool encroaching into the building setback lines. It shall be an offense for any part or appurtenance of auxiliary structure or building, porch, or swimming pool to encroach into the building setback lines. However, under Section 28.04.011 and Section 1.6 of this Chapter 28: Exhibit A: Subdivision Ordinance, the city building official, with consultation with the city engineer, shall administratively review and may approve pool encroachments into the setbacks that do not encroach within five (5) feet of a neighboring property. The city building official shall not

approve an encroachment where any part of a pool encroachment into the setback is more than five inches in height measured from average natural grade. Criteria, submission procedure, and appeal procedure can be located in Section 28.04.011 and Section 1.6 of this Chapter 28: Exhibit A: Subdivision Ordinance. The city building official shall not approve encroachments by a pool pump or other pool equipment. Pool equipment includes filters, heaters, bubblers, or any other type of equipment designed to affect the quality, filtration, or temperature of the pool.