

**CITY OF SHAVANO PARK
PLANNING & ZONING COMMISSION MEETING
CITY HALL, COUNCIL CHAMBERS
900 SADDLETREE COURT, SHAVANO PARK, TEXAS 78231
October 6, 2021**

6:30 P.M.

This notice is posted pursuant to the Texas Open Meetings Act. Notice hereby given that the Planning & Zoning Commission of the City of Shavano Park, Texas will conduct a Regular Meeting on Wednesday, October 6, 2021 6:30 p.m. at 900 Saddletree Court, Shavano Park City Council Chambers.

The meeting agenda and agenda packet are posted online at www.shavanopark.org.

AGENDA

1. Call to order
2. Vote under Section 36-69 of the Shavano Park City Code (“Code”) concerning a finding that each of the items following item 2 on the agenda are “planning issues” or otherwise prescribed Planning & Zoning Commission duties under 36-69(1) of the Code or the severance of one or more of such items for an individual vote on such item or items.
3. The Planning and Zoning Commission welcomes “Citizens to be Heard.” If you wish to speak, you must follow these guidelines. **As a courtesy to your fellow citizens and out of respect to our fellow citizens, we request that if you wish to speak that you follow these guidelines.**
 - Pursuant to Resolution No. R-2019-011 citizens are given three minutes (3:00) to speak during “Citizens to be Heard.”
 - Members of the public may only speak once and cannot pass the individual’s time allotment to someone else
 - Direct your comments to the entire Commission, not to an individual member
 - Show the Commission members the same respect and courtesy that you expect to be shown to you

The Chairman will rule any disruptive behavior, including shouting or derogatory statements or comments, out of order. Continuation of this type of behavior could result in a request by the Mayor that the individual leave the meeting, and if refused, an order of removal. In compliance with the Texas Open Meetings Act, no member of the Commission may deliberate on citizen comments for items not on the agenda. (Attorney General Opinion – JC 0169)
4. Consent Agenda:
 - A. Approval - Planning & Zoning Commission minutes, September 1, 2021.
5. Nomination and appointment of Chairman and Vice-chairman.
6. Discussion - Welcome new members, thanks to departing members with information on open meeting and open records training - Chairman.

7. Public Hearing - The purpose of the public hearing is to receive comments from members of the public regarding proposed amendments to Chapter 36 – ZONING of the City of Shavano Park Code of Ordinances to extend valid time of permits for portable on-demand storage structures (PODS).
8. Discussion / action - Possible amendments to extend valid time of permits for portable on-demand storage structures (PODS) under Chapter 36 – ZONING - City Manager
9. Public Hearing - The purpose of the public hearing is to receive comments from members of the public regarding proposed amendments to Chapter 24 – SIGNS of the City of Shavano Park Code of Ordinances to remove sign regulations that distinguish between on and off premise signage and commercial vs noncommercial speech.
10. Discussion / action - Possible amendments to Chapter 24 - SIGNS to remove sign regulations that distinguish between on and off premise signage and commercial vs noncommercial speech - City Manager
11. Public Hearing - The purpose of the public hearing is to receive comments from members of the public regarding proposed amendments to Chapter 36 – ZONING of the City of Shavano Park Code of Ordinances to comply with H.B. 1475 of the 87th Texas Legislature, which changes Board of Adjustment authority related to variances and gives additional objective grounds for which a variance from a municipal zoning ordinance may be granted.
12. Discussion / action - Possible amendments to Chapter 36 – ZONING of the City of Shavano Park Code of Ordinances to comply with H.B. 1475 of the 87th Texas Legislature - City Manager
13. Discussion / action - Possible amendments to provide regulations for mobile food units and mobile food courts under Chapter 8 – BUSINESS AND BUSINESS REGULATIONS - City Manager
14. Report / update - City Council items considered at previous City Council meetings and discussion concerning the same - City Manager
15. **Chairman Announcements:**
 - A. Advise members to contact City staff to add new or old agenda items.
 - B. Advise members of pending agenda items:
 - i. Presentation / discussion – Open Meetings and Open Records Training by City Attorney

16. **Adjournment**

Accessibility Statement:

The City of Shavano Park City Hall is wheelchair accessible. The entry ramp is located in the front of the building. Accessible parking spaces are also available in the front and sides of the building. Sign interpretative services for meetings must be made 48 hours in advance of the meeting. Call the A.D.A. Coordinator at 817-447-5400 or TDD 1-800-735-2989.

Decorum Required:

Any disruptive behavior, including shouting or derogatory statements or comments may be ruled out of order by the Presiding Officer. Continuation of this type of behavior could result in a request by the Presiding Officer that the individual leave the meeting, and if refused, an order of removal.

Action by Commission Authorized:

The Planning and Zoning Commission may vote and/or act upon any item within this Agenda. The Commission reserves

the right to retire into executive session concerning any of the items listed on this Agenda, pursuant to and in accordance with Texas Government Code Section 551.071, to seek the advice of its attorney about pending or contemplated litigation, settlement offer or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas conflict with the Open Meetings Act and may invoke this right where the City Attorney, the Mayor or a majority of the Governing Body deems an executive session is necessary to allow privileged consultation between the City Attorney and the governing body, if considered necessary and legally justified under the Open Meetings Act. The City Attorney may appear in person, or appear in executive session by conference call in accordance with applicable state law.

Executive Sessions Authorized:

This agenda has been reviewed and approved by the City’s legal counsel and the presence of any subject in any Executive Session portion of the agenda constitutes a written interpretation of Texas Government Code Chapter 551 by legal counsel for the governmental body and constitutes an opinion by the attorney that the items discussed therein may be legally discussed in the closed portion of the meeting considering available opinions of a court of record and opinions of the Texas Attorney General known to the attorney. This provision has been added to this agenda with the intent to meet all elements necessary to satisfy Texas Government Code Chapter 551.144(c) and the meeting is conducted by all participants in reliance on this opinion.

Attendance by Other Elected or Appointed Officials:

It is anticipated that members of City Council or other city board, commissions and/or committees may attend the meeting in numbers that may constitute a quorum of the other city boards, commissions and/or committees. Notice is hereby given that the meeting, to the extent required by law, is also noticed as a meeting of the other boards, commissions and/or committees of the City, whose members may be in attendance. The members of the boards, commissions and/or committees may participate in discussions on the same items listed on the agenda, which occur at the meeting, but no action will be taken by such in attendance unless such item and action is specifically provided for on an agenda for that board, commission or committee subject to the Texas Open Meetings Act.

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the governing body of the above named Shavano Park Planning and Zoning Commission is a true and correct copy of said Notice and that I posted a true and correct copy of said Notice on the bulletin boards, of the City Hall of said City Shavano Park, Texas, a place convenient and readily accessible to the general public at all times, and said Notice was posted on this the 30 of September 2021 at 8:33 a.m. and remained so posted continuously for at least 72 hours preceding the scheduled time of said meeting.

Trish Nichols
City Secretary

Minutes

1. Call to order

Chairman Laws called the meeting to order at 6:30 p.m.

PRESENT:

Carla Laws
Kerry Dike
Michael Janssen
Jason Linahan
Shawn Fitzpatrick
Damon Perrin
Vickey Maisel
William Stipek

ABSENT:

Bill Simmons

2. **Vote under Section 36-69 of the Shavano Park City Code (“Code”) concerning a finding that each of the items following item 2 on the agenda are “planning issues” or otherwise prescribed Planning & Zoning Commission duties under 36-69(l) of the Code or the severance of one or more of such items for an individual vote on such item or items.**

Upon a motion made by Commissioner Fitzpatrick and a second made by Commissioner Dike, the Planning & Zoning Commission voted seven (7) for and none (0) opposed to approve the agenda as it was provided as Planning & Zoning Commission issues. The motion carried.

3. **Citizens to be Heard.**

No one signed up to address the Planning & Zoning Commission.

4. **Consent Agenda:**

Approval - Planning & Zoning Commission minutes, August 4, 2021.

Upon a motion made by Commissioner Janssen, and a second made by Commissioner Linahan, the Planning & Zoning Commission voted seven (7) for and none (0) opposed to approve the Planning & Zoning Commission minutes of August 4, 2021 as presented. The motion carried.

5. **Presentation / discussion - Shavano Park Commercial and Residential Development Semi-annual Presentation - Bitterblue, Inc. / Denton Communities**

Laddie Denton and Daryl Lange from Bitterblue, Inc. / Denton Communities presented the Shavano Park Commercial and Residential Development Semi-annual Presentation.

6. **Discussion - Possible amendments to extend valid time of permits for portable on-demand storage structures (PODS) under Chapter 36 – ZONING - City Manager**

City Manager Hill briefed the Planning & Zoning Commission on a possible amendment to extend valid time of permits for portable on-demand storage structures (PODS) under Chapter 36 – ZONING. No action was taken.

7. **Discussion / action - Possible amendments to provide regulations for mobile food units and mobile food courts under Chapter 8 – BUSINESS AND BUSINESS REGULATIONS - City Manager**

Commissioner Janssen suggested that City staff consider merging the proposed food court regulations into Sec. 8-41 to Sec. 8-51.

Upon a motion by Commissioner Janssen and a second by Commissioner Fitzpatrick, the Planning & Zoning Commission voted seven (7) for and none (0) opposed to approve the changes to Chapter 8 regarding mobile food court regulations.

8. **Discussion - Possible amendments to Chapter 24 - SIGNS - City Manager**

City Manager Hill presented an overview of a possible amendments to Chapter 24 – SIGNS.

9. **Report / update - City Council items considered at previous City Council meetings and discussion concerning the same - City Manager**

City Manager Hill provided an overview of items considered at the previous City Council Meeting.

10. **Chairman Announcements:**

- A. Advise members to contact City staff to add new or old agenda items.
- B. Advise members of pending agenda items.
 - i. POD Permit amendments
 - ii. Board of Adjustment amendments
 - iii. Sign Ordinance Amendments

11. **Adjournment**

Upon a motion made by Commissioner Dike, and a second made by Commissioner Stipek, the Planning & Zoning Commission voted seven (7) for and none (0) opposed to adjourn the meeting at 8:50 p.m.

Carla Laws, Chairman

Trish Nichols, City Secretary

PLANNING AND ZONING STAFF SUMMARY

Meeting Date: October 6, 2021

Agenda item: 5

Prepared by: Curtis Leeth

Reviewed by: Bill Hill

AGENDA ITEM DESCRIPTION:

Discussion / action - Nomination and appointment of a Chairman & Vice-Chairman.



Attachments for Reference:

1) N/A

BACKGROUND / HISTORY: The Planning & Zoning Commission is governed by Sec. 36-69 of the Code of Ordinances:

Sec. 36-69. - Planning and Zoning Commission.

- (a) *Establishment.* Pursuant to Vernon's Local Government Code, § 211.007, the Planning and Zoning Commission is established consisting of nine members appointed as described in chapter IV, section 2-87.
- (b) *Terms of members.* The members of the Planning and Zoning Commission shall serve for overlapping two-year terms.
- (c) *Chairman.* The Planning and Zoning Commission shall elect a chairman and vice-chairman from its own membership of the Commission.
- (d) *Presiding officer.* The chairman shall preside over meetings of the Commission. The vice-chairman shall preside in the absence of or at the request of the chairman.
- (e) *Quorum, majority vote.* A quorum shall consist of five members of the Commission in attendance. Action on any matter shall require the affirmative vote of a majority of all members of the Commission, except in cases when the Commission has twice held a public hearing and considered a zoning application and is unable to reach a majority vote. In such instances, the Commission may submit a report instead of a recommendation to the City Council.
- (f) *Meetings.* Regular meetings shall be held on the first Wednesday of each month at 6:30 p.m. and may be recessed from time to time, effective September 2015, at Shavano Park City Hall, and notice of each meeting shall be given in accordance with the Texas Open Meetings Act. Special meetings may be called by the chairman, provided written notice thereof is mailed to each member at least 72 hours prior to the time thereof and notice of each such meeting shall be given in accordance with the Texas Open Meetings Act. All meetings of the Commission shall be open to the public. The place, day and/or hour of meetings may be changed by vote of the Commission at any regular meeting.
- (g) *Motions.* Any motion by a member shall require a second. After a motion has been made and duly seconded, discussion of the motion may be held for a reasonable time. Discussion by members or by opponents or proponents, of a question before the Commission shall terminate whenever a member shall call for a vote upon the question or whenever the chairman shall so rule.
- (h) *Procedure.* Whenever any question or procedure or qualification may be raised at a Commission meeting, the chairman shall rule thereon. A member may move to overrule the chairman's decision, which may be done only by a majority vote of the members present.
- (i) *Voting.* Voting on zoning applications shall be called by roll call vote. Voting on all other matters may be by voice vote, provided that roll call vote shall be taken upon demand of any member.

- (j) *Conflict of interest.* A member shall not vote or participate as a member in any matter before the Commission if the member has any interest in the matter, whether such interest is direct or indirect, financial or otherwise. If a member has a conflict of interest, the member shall comply with Tex. Local Governmental Code § 171.001 et seq. In any case, where the question of a member's interest is raised, the chairman shall rule on whether the member should be disqualified.
- (k) *Recommendations.* The Commission shall take no final action on any matter before it without first obtaining a recommendation from the director of planning and reports from the other city departments concerned, as determined by the Commission.
- (l) *Duties.* The duties of the Planning and Zoning commission are [as] follows:
 - (1) Review, consider and take action on all preliminary and final plats consistent with the requirements of State and local law;
 - (2) Review and make recommendations for zoning boundaries and appropriate zoning regulations for zoning districts;
 - (3) Review and consider amendments to the City's comprehensive plan;
 - (4) Hold public hearings and consider planning issues when deemed appropriate by the Planning and Zoning Commission upon a finding by a majority vote that the issue being considered is a "planning issue" with such findings being recorded in the minutes of the meeting.
 - (5) To perform duties and functions as required by State law; and
 - (6) To perform other duties and functions as requested by a majority vote of City Council.

DISCUSSION: The Commission by Ordinance shall formally appoint a Chairman and appoint a Vice-Chair at the start of each new Committee membership after Council annual appointments.

COURSES OF ACTION: Formally appoint Chairman and Vice-Chair; or decline and provide guidance to staff

FINANCIAL IMPACT: N/A

MOTION REQUESTED:

- 1. To nominate _____ to serve as the Chairman of the Planning and Zoning Commission.
- 2. To nominate _____ to serve as the Vice-Chairman of the Planning and Zoning Commission.

PLANNING AND ZONING STAFF SUMMARY

Meeting Date: September 1, 2021

Agenda item: 7 & 8

Prepared by: Curtis Leeth

Reviewed by: Bill Hill

AGENDA ITEM DESCRIPTION:

7. Public Hearing - The purpose of the public hearing is to receive comments from members of the public regarding proposed amendments to Chapter 36 – ZONING of the City of Shavano Park Code of Ordinances to extend valid time of permits for portable on-demand storage structures (PODS).

8. Discussion / action - Possible amendments to extend valid time of permits for portable on-demand storage structures (PODS) under Chapter 36 – ZONING - City Manager

- | | | |
|---|-----------------------------------|--------------------------------|
| X | Attachments for Reference: | 1) 8a Possible PODS Amendments |
| | | 2) 8b PODS Permit Example |

BACKGROUND / HISTORY: The City established regulations for Portable on-demand Storage Structures (PODS) in 2017 with Ordinance O-2017-001.

DISCUSSION: **UPDATES** Since 2017, staff experience is that the Ordinance is compliance for residents is difficult because of the 1 month limitation for PODS permit with an equally short 10-day City Manager extension.

- (a) *Permit.* No person shall store, maintain or otherwise keep a portable on-demand storage structure on any lot or parcel of property within the City of Shavano Park without first having obtained and possessing an active permit issued by the City. Permits are valid for a period not to exceed 30 days. The City Manager may grant an additional ten-day extension of the permit upon request from the permit holder.

Home renovations projects in Shavano Park are generally large projects that last longer 1 month. Several residents fixing damaged homes after Winter Storm Uri in February 2021 found compliance frustrating.

Staff propose a six month permit with a month-long City Manager extension.

At the September 1, 2021 the Planning & Zoning Commission discussed possible PODS amendments but otherwise took no action.

COURSES OF ACTION: Approve PODS permit for 6 months with 1 month extension or specify alternative time; or decline entirely and provide guidance to staff.

FINANCIAL IMPACT: N/A

MOTION REQUESTED: Recommend approval of amendments to extend valid time of permits for portable on-demand storage structures (PODS) under Chapter 36 – ZONING.

Sec. 36-45. - Portable on-demand storage structures.

A portable on-demand storage structure may be utilized as a temporary structure within the city when in compliance with the standards of this subsection. Any use of such structures within the city not in compliance with this subsection shall be unlawful.

- (a) *Permit.* No person shall store, maintain or otherwise keep a portable on-demand storage structure on any lot or parcel of property within the City of Shavano Park without first having obtained and possessing an active permit issued by the City. Permits are valid for a period not to exceed ~~six months~~^{30 days}. The City Manager may grant an additional ~~ten day~~^{month-long} extension of the permit upon request from the permit holder.
- (b) *Terms of Use.* Portable on-demand storage structures may be installed in all zoning districts with the following restrictions:
 - (1) No portable on-demand storage structure can be stacked on top of one another or on top of any other object;
 - (2) No portable on-demand storage structures shall be used for human habitation or commercial business purposes;
 - (3) Any portable on-demand storage structure shall be secure, structurally sound, stable and in good repair;
 - (4) No portable on-demand storage structure shall be used to store hazardous materials; and
 - (5) No portable on-demand storage structure shall be used to store refuse or debris.
- (c) *Revocation.* Any permit issued under this section may be revoked upon ten days' written notice to the owner, occupant or person in control of the property if such person is storing, maintaining, or otherwise keeping a portable on-demand storage structure in violation of this section.
- (d) *Fees.* The permit described in this subsection shall have no City fee associated with it.

([Ord. No. 0-2017-001](#), § V, 9-18-2017)

From: Jennifer [<mailto:jenniflower73@sbcglobal.net>]
Sent: Thursday, August 26, 2021 10:52 AM
To: Bill Hill <citymanager@shavanopark.org>
Subject: APPROVED POD PERMIT FOR 101 W. MOSSY CUP

Mr Hill,

I am needing an extension of the POD unit at 101 W Mossy Cup. The appliances all arrived very early and did not want to turn them away since every thing is taking so long to get delivered, if it's even in stock.

We won't be ready to install appliances for 6-8 weeks. Currently waiting on cabinets to be finished and then countertops to be fabricated and installed.

Is it possible to extend the POD for 60 days? Or 30 days & then we can see where we are at with the renovation & reasses at that time?

Jennifer Teske

CITY OF SHAVANO PARK
POD PERMIT NO. 210727

DATE ISSUED: July 27th, 2021 EXPIRATION DATE: August 25th, 2021

NAME: Jennifer Teske

ADDRESS: 101 W Mossy Cup PHONE: 210-429-0470

Background. The purpose of the POD permit is to allow temporary storage for residents during remodeling/renovation projects, and is intended for short-term use only. For longer term projects, the POD can easily be loaded and then stored at the off-site POD facility and when renovation is complete it is then delivered back to the residence for unloading. A POD permit is issued for thirty (30) days, and may be granted up to one (1) ten (10) day extension.

Permit. In accordance with Sec. 36-45, of the City of Shavano Park City Zoning Ordinance, all portable on demand storage structures may be utilized as a temporary structures after a permit is issued and the structure is deployed in compliance with the following guidelines.

- (1) No portable on-demand storage structure can be stacked on top of one another or on top of any other object;
- (2) No portable on-demand storage structures shall be used for human habitation or commercial business purposes;
- (3) Any portable on demand storage structure shall be secure, structurally sound, stable and in good repair;
- (4) No portable on-demand storage structure shall be used to store hazardous materials; and
- (5) No portable on-demand storage structure shall be used to store refuse or debris.

This permit is valid for a period of 30 days from the date of issuance, and may be extended with the permission of the City Manager for a period of 10 days.

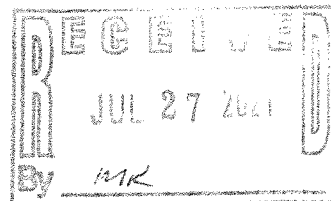
There is no permit fee. Please post a copy of this permit on the POD.

Jennifer Teske
Homeowner

7/27/2021
Date

Bill Ham
City Manager

7/27/21
Date



PLANNING AND ZONING STAFF SUMMARY

Meeting Date: September 1, 2021

Agenda item: 9 / 10

Prepared by: Curtis Leeth

Reviewed by: Bill Hill

AGENDA ITEM DESCRIPTION:

9. Public Hearing - The purpose of the public hearing is to receive comments from members of the public regarding proposed amendments to Chapter 24 – SIGNS of the City of Shavano Park Code of Ordinances to remove sign regulations that distinguish between on and off premise signage and commercial vs noncommercial speech.

10. Discussion / action - Possible amendments to Chapter 24 - SIGNS to remove sign regulations that distinguish between on and off premise signage and commercial vs noncommercial speech - City Manager



Attachments for Reference:

- 1) 10a - Possible Sign Amendments TRACK CHANGES
- 2) 10b – Opinion, 5th Circuit Court of Appeals

BACKGROUND / HISTORY: In 2016, the City made major revisions to the City’s sign code and created a sign policy for City property in light of 2015 Supreme Court Reed v. Town of Gilbert decision. In 2017, the City made further amendments to the sign policy with regard to signs during voting periods. In 2020 the City made again major revisions to the sign code with Ordinance O-2020-002 under consultation with the City Attorney.

The City is in two active lawsuits regarding the Sign Ordinance. In July, one of the lawsuits was heard by the Fifth Circuit Court of Appeals. The Court remanded the case back to district Court pending the Supreme Court decision in *Reagan National Advertising of Austin, Inc. v. City of Austin*.

That case will decide whether the Austin city code’s distinction between on-premise signs, which may be digitized, and off-premise signs, which may not, is a facially unconstitutional content-based regulation under Reed v. Town of Gilbert (SCOTUSblog).

DISCUSSION: **UPDATES** Staff recommends all content base sign language be removed. A draft version is attached.

At the September 1, 2021 Planning & Zoning Commission the Commission discussed possible amendments to the Sign Code and took no action.

Updates from September 1, 2021 Meeting:

- Consistency / wordsmithing edits [Laws / Janssen]
- Restore flag rules to differ by zoning district, just remove content regulations [Stipek]
- Attorney rewrote Sec. 24-5(9)'s stipulation that changing an advertised price does not require a permit. Attorney agreed content regulation is defensible but recommends rewording.
- Attorney and staff recommend not to add the proposed "sign not limited to ___ content" references proposed under Sec. 24-5(4), Sec. 24-6(4) and Sec. 24-6(5). Not added to track changes.

COURSES OF ACTION: Recommend approval of amendments as presented; propose additional amendments; or decline and provide guidance to staff.

FINANCIAL IMPACT: N/A

MOTION REQUESTED: Recommend approval of amendments **as presented** to Chapter 24 - SIGNS to remove sign regulations that distinguish between on and off premise signage and commercial vs noncommercial speech.

(specify additional amendments if warranted)

Chapter 24 - SIGNS

ARTICLE I. - IN GENERAL

Sec. 24-1. - Purpose and scope.

These regulations shall apply in the City Limits. These regulations set forth by the City of Shavano Park, pursuant to its authority to regulate structures under Tex. Local Government Code Ceh. 211 and any authority it may have under Tex. Local Government Code Ceh. 216, combine the need to protect the public safety and welfare, the need to encourage pedestrian movement, the need for a well maintained and attractive community, and the need to adequately convey ideas, provide communication, and identify features within the community. The provisions do not ensure or provide for every property or business owner's desired level of visibility for signs. The sign standards are intended to allow signs to have adequate visibility from streets and rights-of-way that abut a site, but not for visibility from streets and rights-of-way farther away. The regulations for signs and awnings have the following specific objectives:

- (1) To ensure that signs and awnings are designed, constructed, installed and maintained according to standards to safeguard life, health, property, and public welfare, and to eliminate excessive and/or confusing sign displays that create potential hazards to motorists, pedestrians, and to property;
- (2) To allow and promote positive conditions for sign communication while at the same time restrict signs which create continuous visual clutter and hazards at public right-of-way intersections;
- (3) To reflect and support the desired character and development patterns of the various zoning districts in order to plan and promote an attractive environment;
- (4) To allow for adequate and effective signs in business and office districts, while preventing signs from dominating the appearance of the area, thereby encouraging a positive business atmosphere;
- (5) To establish a sign application and sign permit review process that effectively regulates issues pertaining to the location, placement, and physical characteristics of signs in an effort to ensure compatibility with adjoining land uses, architecture, and landscape; and
- (6) To provide for consistent, fair, and content neutral application and enforcement of regulations pertaining to signs and to ensure that the constitutionally guaranteed right of free speech is protected.

Sec. 24-2. - Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Advertising bench means any bench providing seating to the general public without charge, which may bear advertising.

Animated or moving sign means any sign, or part of a sign, which changes physical position or appearance by any movement or rotation or which gives the visual impression of such movement or rotation.

Awning, canopy, or marquee sign means a sign that is mounted, painted on, or attached to a building or an awning, canopy, or marquee that is otherwise permitted by this chapter.

Banner sign means a sign made of fabric or any non-rigid material with no enclosing framework but does not include a flag, pennant, or feather banner.

Back-to-back sign means a structure containing two parallel signs whose faces are oriented in opposite directions and are spaced no more than ten feet apart.

Bandit sign means a sign install without the written permission of the land owner which is tacked, nailed, posted, pasted, glued, or otherwise attached to trees, utility poles, street signs, street furniture, stakes, or fences or other objects or installed in the right-of-way, and any temporary sign which is attached to another sign. No sign owned or installed by the City, the State, or a public utility shall be considered a bandit sign. A bandit sign is considered trash and may be discarded in accordance with ~~section~~Sec. 24-14.

~~*Billboard* means any outdoor, off-premises sign, display, device, figure, painting, drawing, message, poster, structure, or thing that is designed, intended, or used to advertise or inform.~~

~~*Billboard operator* means any responsible party who installs, services, maintains, alters, repairs, or demolishes billboards.~~

Bill posters means advertising poster or handbill.

Chief of Police means the City's duly appointed Chief of Police.

City means the City of Shavano Park, Texas.

City Code Compliance Officer means one or more individuals duly appointed by the City to enforce City Code violations.

Commercial sign means any sign in zoning districts O-1, B-1 or B-2 that is not a safety or government sign ~~which directs the attention of the general public to a place of business that sells, rents, or leases goods, services, or property, or advertises a location that sells, rents, or leases goods, services, or property.~~

Dilapidation means any sign where elements of the sign area or background have portions of the finished material missing, broken, or illegible; where the structural support is visibly bent, broken, dented, rusted, corroded, or loose; or where the sign or its elements are not in compliance with the adopted electrical code and/or the building code.

Early voting period means that period as prescribed by Tex. Elections Code § 85.001, as amended.

Electric sign means:

- (1) Any sign on which letters, figures, designs, or messages are formed or outlined by electric illumination, or by a transparent or translucent medium which is electrically illuminated, whether the illuminating device is contained within or on the sign, including digital signs illuminated by LCD, LED, plasma displays, projected images, or any other illumination format;
- (2) Any outside building outlining;
- (3) Any interim decorative displays; and
- (4) Any gas tube window outlining.

Any portable sign that has electrical components attached, connected to, or part of the sign, or support, whether electrified or not, shall be considered an electric sign and all provisions of this chapter pertaining to electric signs shall apply to such signs.

Embellishments means any feature such as a cutout, neon, or plastic letters, clock, electric device, or space extension, which is added to an outdoor advertising structure. All embellishments shall be included when measuring the sign area.

Feather banner means any sign that is constructed of lightweight material (such as cloth, canvas, or vinyl) affixed to a pole or building which is similar to a flag, except that it is longer than it is wide. A feather banner resembles a feather, in that it is tall and narrow, having more surface area vertically than horizontally when fully extended.

Flag, ~~commercial~~ means any rectangular piece of cloth or similar material, attachable by one edge to a pole or rope and designed to be fully unfurled or displayed in natural wind conditions. A pennant sign is not considered a flag. ~~fabric, banner, or bunting containing distinctive colors, patterns, or symbols used for the purpose of advertising or drawing attention to a business. Does not include non-commercial flags, which are separate and distinct by definition and treatment in this Code.~~

~~*Flag, non-commercial* means any flag that is not a commercial flag and is not used for the purpose of advertising or attention to a business, including any flag that has a non-commercial message including, but not limited to, a flag of the United States, the State, the City, or foreign nations having diplomatic relations with the United States, and any other flag adopted or sanctioned by an elected legislative body of competent jurisdiction.~~

Flashing sign means any directly or indirectly illuminated sign that exhibits changing natural or artificial light or color effects by any means whatsoever.

Government sign means any sign that is installed or maintained by the federal, state, or local government. Local government includes any political subdivision including the county, the City, the school district, the water district, or an emergency services district.

Install means to construct, erect, place, affix, display, or attach.

Loop 1604 frontage means and shall include all Loop 1604 frontage and access roads.

Monument sign means any sign that is a ground-mounted structure of masonry, rock, brick, stone, or stucco. Monument signs shall have a minimum of 90 percent masonry materials such as rock, brick, stone, or stucco. Concrete and cinder blocks may be used structurally if faced with rock, brick, or stucco in accordance with the International Building Code.

Neighborhood means a distinct segment of the community, usually consisting of essentially similar housing stock, whose boundaries are defined by physical barriers such as major arterial streets and/or natural features such as creeks and rivers.

~~*Non-commercial sign* means any sign which does not advertise the sale, rent, or lease of goods, services, or property or a location that sells, rents, or leases goods, services, or property.~~

Non-conforming sign means any sign lawfully in existence on the date the provisions of this chapter are adopted that do not conform to the provisions of this chapter, but which were in compliance with the applicable regulations at the time they were installed or maintained.

~~*Off-premises sign* means any commercial sign that advertises a business, responsible party, person, activity, goods, products, real property, or services not located on the property where the sign is installed, or that directs persons to a location other than the property where the sign is located.~~

~~*On-premises sign* means any commercial sign identifying or advertising a business, responsible party, person, or activity, and installed and maintained on the same premises as the business, responsible party, or activity.~~

Pennant sign means any non-rectangular sign of lightweight material suspended from a rope, wire, or string and displayed in a series with or without a message, designed to move in the wind. A pennant sign is not considered a flag.

Pole sign means any sign:

- (1) —Supported by poles, uprights, or braces which are not concealed in an enclosed base but are permanently installed on or in the ground and wholly independent of any building for support, either single- or double-faced; ~~or~~

(2) —Whose only structural support consists of exposed poles, posts, beams, or other devices mounted in the ground;:

(3) -Whose structural support extends sign area at least 10 feet above grade; and

(4) Is commonly referred to as a billboard.

All pole signs require approval in an Urban Corridor sign plan – see Chapter 24, Article II for Urban Corridor sign regulations.

Portable sign means any sign that is readily capable of being moved or removed, whether attached or affixed to the ground or any structure that is typically intended for temporary display. Portable signs include, but are not limited to:

- (1) Signs designed and constructed with a chassis or support with or without wheels;
- (2) Menu and "sandwich" board signs;
- (3) "A" and "T" frame signs;
- (4) Posters, flags, or banners affixed to windows, fences, railings, overhangs, trees, hedges, or other structures or vegetation, ~~except for pole-mounted community event banners;~~
- (5) Searchlights; and
- (6) Inflatables.

For the purposes of this definition, no sign owned or installed by the City, the State, or a public utility shall be considered a portable sign.

Premises means any site on which a sign is requested, required, or installed including any lot, area, facility, or building which the responsible party owns, leases, or has a right to use.

Private property means all property other than public property, as defined herein.

Prohibited neon means any use of neon lighting other than for lettering or logos. For the purposes of this chapter, all uses of neon lighting shall be considered a sign.

Public property means property owned by, or dedicated to the City, or owned by, or dedicated to other governmental entities. Signs located on public property shall be governed by a separate City policy.

Pylon sign means any freestanding sign with visible support structures or with a support structure with a pole cover or pylon cover.

Responsible party means the owner/operator of the business being identified on the sign; the owner of the property upon which the sign or sign structure is located; the owner of the sign or sign structure; the person who installs a sign or sign structure, contracts with or directs a person to accomplish the installation; and/or the person who retrieves a sign from the impound.

Right-of-way means the area on, below, or above a public road, highway, street, public sidewalk, alley, waterway, or utility easement in which a governmental entity has an interest.

Safety signs means any sign on an office or business property which point or direct a person or vehicle to a specific place or along a specific course in order to ensure the safe and orderly passage of vehicles and persons around the premises of a building, such as "entrance," "exit," "handicap access," "employee access only" or "patient drop off."

Setback means the line within a lot defining the minimum horizontal distance between a building and the property line. Building setback lines include front, rear, and side setbacks that are measured from the front, rear, and side property lines. Signs installed within building setbacks, when authorized, should not obstruct traffic vision.

Sign means an outdoor structure, sign, display, light device, figure, painting, drawing, message, plaque, poster, ~~billboard~~, or other thing that is designed, intended, or used to advertise or inform.

Sign area means the area of a sign that is used to determine the maximum area of a sign including the entire advertising or communicative area of a sign. Unless otherwise addressed, sign area is measured from the highest, lowest, and widest points in a rectangular or square format. Sign area size restrictions shall apply to each respective side of the sign structure.

Site means a parcel of land developed for commercial or residential use. A site may be a single platted lot, or may be a group of lots with a common or shared frontage.

Voting period means the period beginning with the first day of the early voting period and ending when the polls close on the designated election day. The voting period corresponds only with elections administered by Bexar County.

Wall sign means any sign installed on the wall of a building or structure, with the exposed face of the sign parallel to the surface of the wall of the building.

Sec. 24-3. - Prohibited signs.

Except as otherwise provided for in this chapter, it is an offense for a responsible party to install or maintain, or cause to be installed or maintained, on private property located in the City, any advertising bench, animated, or moving sign, awning, canopy, or marquee sign, back-to-back sign, bandit sign, ~~billboard~~, bill poster, electric sign, embellishment, flashing sign, monument sign, ~~on-premises sign~~, prohibited neon, blinking, rotating, moving, or intermittently illuminated sign, pole sign, portable sign, pylon sign, any sign protruding above the building roof line or parapet line, painted or Day-Glo colored sign, banner sign, valance or display constructed of cloth, canvas, light fabric, paper, pliable vinyl, plastic, or other light material, feather banner, pennant, wall sign, any sign installed in exchange for a monetary or bartered benefit, any sign

displaying any matter in which the dominant theme of the material taken as a whole appeals to the prurient interest in sex, or is patently offensive because it affronts contemporary community standards relating the description or representation of sexual matters, and is utterly without redeeming social value. Such action is hereby declared to be a public nuisance. Any sign not specifically listed as being allowed in this chapter is expressly prohibited. A responsible party shall not install a sign in the right-of-way or on property owned or controlled by the City without specific written permission of the City Council. All signs installed without the permission of the property owner of the land upon which the signs is installed is considered a prohibited sign.

Sec. 24-4. - Grandfather provisions.

This chapter is not intended to require the relocation, reconstruction, or removal of a sign which is already in place at the time of the adoption of the ordinance from which this chapter is derived and which was installed in compliance with local ordinances, laws and regulations applicable at the time of its installation, to the extent that Tex. Local Government Code ~~Chapter~~ 216 preempts the application of this chapter to those signs or to any signs otherwise approved pursuant to Ordinance ~~[No.]~~ 100-03-99, as amended from time to time, or by City Council approval, provided that all such signs are constructed in accordance with such approval.

Sec. 24-5. - Non-nuisance signs in business and office districts.

The following signs are not deemed to be a public nuisance and may only be installed within the City limits in accordance with the following terms and conditions:

- (1) *Construction development.* Upon final approval of a construction permit, three signs may be installed temporarily on the property of the approved plat or development, provided however, that such signs shall not exceed a total of 128 square feet in sign area and that no one sign exceeds 64 square feet in sign area. Sign area for construction development shall include its framing, trim and molding. The signs shall be installed so as not to interfere with the occupancy or use of any neighboring lots. Such signs shall only be installed during the time of active and ongoing building construction and shall be removed upon the issuance of the certificate of occupancy for the development. A responsible party shall not install any sign in the right-of-way.
- (2) *Post-certificate of occupancy.* Beginning at the time of the issuance of the certificate of occupancy, a single sign may be installed temporarily on each approved plat or development, provided, however, that such sign shall not exceed 64 square feet in sign area. Sign area for post-certificate of occupancy

signs shall include its framing, trim and molding, but shall not include the pole or pylon of the sign. The signs shall be installed so as not to interfere with the occupancy or use of the business or office development. All such signs shall be installed for a maximum of one continuous 90-day period from the issuance of the certificate of occupancy. A responsible party shall not install any sign in the right-of-way.

(3) *Monument signs.* Monument signs shall be permitted subject to the following specifications:

- a. In general. In business and office districts each property fronting a public or private street shall be allowed one monument sign. Properties fronting two public or private streets shall be allowed one monument sign on each street, for a total of two monument signs. Monument signs may have a sign inserted into the structure provided the sign area of the insert shall not exceed 75 percent of the average height and/or 90 percent of the average width of the structure. The sign insert may be backlit or externally illuminated.
- b. Monument signs fronting Loop 1604 frontage.
 1. Monument signs fronting Loop 1604 frontage shall not exceed 25 feet in height from the top of the sign to the ground, except as expressly provided in ~~section~~Sec. 24-5(3)b.2.
 2. For properties where the site elevation is below the adjacent driving lanes of Loop 1604, monument signs shall not exceed 25 feet in height as measured from the top of the sign to the adjacent elevation of the Loop 1604 driving lanes, nor shall such monument signs exceed 48 feet in height as measured from the top of the sign to the ground.
 3. Each monument sign located along Loop 1604 frontage shall not exceed an average of 25 feet in width at the base and not exceed an average of 20 feet in width above the base. The base shall not be less than 75 percent of the average width of the sign. The base of the monument sign can include ~~the name and/or address for commercial centers~~safety and directional information.
 4. The sign area insert of a monument sign shall not exceed 150 square feet of sign area per side.
- c. Monument signs fronting N-W-NW Military Highway.
 1. Monument signs fronting NW Military Highway shall not exceed 12 feet in height as measured from the top of the sign to the ground.
 2. Monument signs located on N-W-NW Military Highway shall not exceed an average of 15 feet in width at the base and not exceed an average of ten feet in width above the base. Monument signs on N-W-NW Military Highway do not require that a base be constructed. If a base is

constructed on the monument sign, the base can include signage for name and/or address of the commercial center.

3. The sign area of the insert of a monument sign shall not exceed 55 square feet of sign area per side excluding the trim and base of the monument sign, if any. The base of the sign shall be considered when determining the height of the sign.
- d. Monument signs fronting any other road.
1. Lots with street frontage greater than 250 feet. Monument signs fronting any road other than Loop 1604 frontage or NW Military Highway shall not exceed ten feet in height as measured from the top of the sign to the ground.
 2. Lots with street frontage less than 250 feet. Monument signs fronting any road other than Loop 1604 frontage or NW Military Highway shall not exceed six feet in height as measured from the top of the sign to the ground.
 3. The sign area of the insert of a monument sign shall not exceed 50 square feet excluding the trim and the base of the sign, if any.
- e. Convenience stores. Each convenience store, as defined by ~~section~~Sec. 36-1 of the City of Shavano Park Code of Ordinances, may install one monument sign with electric display that conforms with this section. Convenience stores fronting on two streets shall be allowed one monument sign with electric display facing each street. The electric sign shall not be neon, blinking, rotating, animated, moving, flashing, or intermittently illuminated. The monument sign shall meet all other requirements in this Code.
- (4) During the period that a property is for sale, rent or lease an additional single sign of not more than 64 square feet is permitted, provided such sign is located entirely within the property to which the sign pertains, is not illuminated, and is removed within ten days after the sale, rental or lease has been consummated. Commercial lots fronting on two streets shall be allowed one sign of not more than 64 square feet facing each street. Sign area for a sign under this section shall include framing, trim and molding.
- (5) Multi-tenant buildings.
- a. Each multi-tenant building that has exterior access to individual businesses may attach one wall sign, and one awning sign for each window and/or exterior door, as set forth in this subsection. This sign shall be compatible with the character of the premises upon which it is installed. Each sign shall require a permit, which may be obtained separately or within a building permit. Such signs shall not exceed an aggregate of 50 square feet of sign area per wall per business on up to two walls.

b. Each multi-tenant building that has interior access to individual businesses or office suites shall be permitted either:

1. For a building less than 30,000 square feet in area, up to three wall signs may be installed on one side of a building, and said signs shall not collectively exceed 150 square feet in sign area with no one sign exceeding 120 square feet; or
2. For a building over 30,000 square feet in area, up to five wall signs may be installed on the building, and said signs shall not collectively exceed 250 square feet in sign area with no one sign exceeding 120 square feet.
3. Sign area for a wall sign under this section shall include all area of the sign including the trim. The sign's framing, trim molding and/or supporting structure shall not protrude above the building roof line or parapet line.

c. All illuminated signs directed toward residential areas shall comply with section~~Sec.~~ 24-7.

(6) Single-tenant buildings. Each single-tenant building may have one wall sign, and in addition one awning sign for each window and/or exterior door, subject to the limitations of this section. Such signs shall not exceed an aggregate of 50 square feet of sign area per wall on up to three walls. Sign area for a wall sign under this section shall include all area of the sign including the trim. The sign's framing, trim molding and/or supporting structure shall not protrude above the building roof line or parapet line.

(7) If any sign is installed on a building structure, the sign and its framing, trim molding and/or supporting structure shall not protrude above the building roof line or parapet line.

(8) Safety and directional signs. Signs on office or business property which point or direct a person or vehicle to a specific location or along a specific course in order to ensure the safe and orderly passage of vehicles and persons around the premises of a building, such as "entrance", "exit", "handicap access", "employee access only" or "patient drop off" are allowable provided they are no larger than six square feet in sign area. Sign area for a sign under this section shall include trim, molding, and framing, but shall not include the pole or pylon of the sign, if any.

(9) Permits.

a. No non-nuisance signs in business or office districts shall be installed within the City unless a building permit for such sign has first been issued by the City's building official. The permit application shall be accompanied by engineered drawings and a site plan showing the proposed sign location.

b. An electrical permit shall be required for any sign requiring the use of electricity in the operation of such sign.

- c. The responsible party must make application for a sign permit, shall pay a fee in the amount as specified in the schedule of fees as approved by the City Council, and secure the permit before beginning work.
- d. If the City Manager or the City Manager's designee finds that the proposed sign conforms in all respects to this chapter, the City Manager shall issue the permit; otherwise the City Manager shall deny it.
- e. Any permit that does not comply with the provisions of the chapter or which is issued in violation of any provision hereof shall be void, and no right or privilege whatsoever shall accrue thereunder.
- f. The City Manager shall instruct the building official to immediately inspect all permitted signs upon completion to determine compliance with the permit.
- g. An applicant or responsible party may appeal any denial of a permit or determination that a sign has not been built in compliance with a permit to the Board of Adjustment as described in ~~section~~Sec. 24-15.
- h. No responsible party may reinstall, move, alter, modify, or relocate any sign which requires a permit without first obtaining a sign permit from the City. ~~However, merely e~~Changing the price of advertised goods or services alone is not deemed to be altering the sign and shall not require an ~~shall not require an~~ additional permit.

~~(10) Any sign allowed under this section as a commercial sign may also be a non-commercial sign.~~

Sec. 24-6. - Non-nuisance signs in residential zoning districts.

In A-1, A-2, A-3, A-4, A-5 PUD, MXD and CE zoning districts the following signs are hereby not deemed to be a public nuisance and do not require a permit unless specifically required below:

- (1) Subdivision sign. Upon final plat approval, a single sign may be installed temporarily on each approved plat or development property, provided, however, that such sign shall not exceed 64 square feet in sign area. Sign area for a subdivision sign shall include its framing, trim and molding, and shall be installed so as not to interfere with the occupancy or use of any lots in the subdivision. All such signs shall be removed upon completion of the sale of 95 percent of the lots in the subdivision. Such sign shall not be more than ten feet in height.
- (2) Temporary ~~non-commercial sign—Six square feet~~. Each residential property may erect one temporary sign ~~non-commercial sign~~ on the property that conforms to the following requirements:
 - a. A responsible party may install a sign in such a manner that it may be viewed from the public right-of-way for up to 60 days per calendar year;

- b. The gross sign area shall not exceed six square feet in sign area. Sign area for a temporary ~~non-commercial~~ sign under this section shall include framing, trim and molding;
 - c. The sign shall not be higher than six feet above grade; and
 - d. The sign cannot be illuminated or backlit.
- (3) Residential signs—~~Four square feet~~. Each residential property may erect two signs that conform to the following requirements:
- ~~a. No more than one of the two signs may be a commercial sign.~~
 - a~~b~~. Each sign cannot exceed four square feet in sign area. Sign area for a temporary sign under this section shall include framing, trim and molding;
 - b~~e~~. Signs shall be installed within ten feet of the front facing of the primary residence;
 - c~~d~~. Signs shall not be higher than four feet above grade; and
 - d~~e~~. The signs shall not be illuminated or backlit.
- (4) During the period the residential property is listed for sale or lease, an additional sign may be installed on the property, subject to the restrictions noted in sectionSec. 24-6(2)b—d. Residential lots fronting on two streets shall be allowed one sign facing each street.
- (5) Voting period signs. During voting periods as defined in sectionSec. 24-2, each residential property may install ~~non-commercial~~additional signs in addition to those described in sectionSec. 24-6(2), subject to the following restrictions:
- a. No sign shall be installed more than 60 days prior to the start of the voting period;
 - b. All signs shall be removed by 11:59 p.m. the day following the end of the voting period;
 - c. The total sign area of all voting period signs shall be no more than 44 square feet, and no one sign shall be larger than 36 square feet;
 - d. A ~~non-commercial~~ sign shall not be higher than six feet above grade including its pole or pylon; ~~and~~
 - e. The signs shall not be illuminated or backlit; and-
 - f. Sign area for signs under this section shall include all including trim, molding, and framing of the sign. The pole or pylon of the sign shall be considered for height above grade, but shall not be considered part of the sign area.
- (6) Neighborhood monument signs. Neighborhood monument signs may be installed on property owned by a property owner's association and shall be a maximum of ten feet in height and shall not exceed an average of six feet in width above the base, regardless of location. The base shall be included in

measuring the maximum height of the sign. This sign requires a permit. This sign shall not be installed in the right-of-way without approval of the City Council.

- (7) Street monument signs. Street monument signs may be installed subject to approval of the City Council.
- (8) Each residential property shall prominently display its address as to be easily legible from the adjacent street. Addresses and monuments displaying the address shall not constitute a sign in terms of limiting or eliminating the rights to a sign as allowed in other sections of this chapter.
- (9) No sign shall be installed on public property including a public easement or right-of-way unless otherwise specified in this chapter.
- (10) Signs installed in violation of these regulations are considered a nuisance and may be removed by the City Manager or their designee. A sign so removed under the provisions of this section which has more than minimal value as determined by the City Manager shall be kept in storage for a period of ten days, and if it is not claimed by the responsible party within said period, it may be disposed of in a lawful manner. The City Manager may send notice to the sign owner within three business days of removing the sign if the sign owner's contact information is reasonably discernible from the sign itself.

Sec. 24-7. - Exterior lighting and hours for business and building wall signs.

Exterior lighting of the building and building wall signs shall not exceed the maximum height of the building or wall sign. Lighting for signs fronting on any street other than streets adjacent to or abutting commercial property shall be turned off not later than 11:00 p.m. or one-half hour after the business is no longer open to the public, if earlier. All signs shall be compliant with the outdoor lighting requirements of chapter 14 as well as all requirements of this chapter.

Sec. 24-8. - Displayed address of commercial property.

Each commercial establishment shall prominently display its address as to be easily legible from the adjacent street. Addresses and monuments displaying the address shall not constitute a sign in terms of limiting or eliminating the rights to a sign as allowed in other sections of this chapter.

Sec. 24-9. - Authorized signs.

The following signs under this section are authorized in every zoning district or property without a permit, unless specifically required below:

- (1) Government signs.
- (2) Traffic-control devices that are installed and maintained to comply with the Texas Manual on Uniform Traffic-Control Devices.
- (3) Signs required by this chapter.
- (4) Signs required by other law, including federal, state, or local law, including a sign that a property owner is required to post on the owner's property to warn of a danger or to prohibit access to the property either generally or specifically; the owner must comply with the federal, state, or local law to post a sign on the property.
- (5) Official governmental notices and notices installed by governmental officers in the performance of their duties for regulatory purposes such as neighborhood crime watch areas, to identify streets, or to warn of danger including those installed by the City, county, water district, or other governmental entity.
- (6) Signs displayed on trucks, buses, trailers, mobile food ~~units~~ vendors, or other vehicles that have a sign area, including the entire communicative area of the vehicle, which is less than 32 square feet and are being operated as motor vehicles, provided that the primary purpose of the vehicles is not for display of signs and provided that they are parked in areas appropriate to their use as vehicles as regulated by chapter 36 of the Code of Ordinances, are in operable condition, and carry a current and valid license plate and state inspection tag. Vehicle signs shall conform to the following restrictions:
 - a. Vehicular signs shall contain no flashing or moving elements;
 - b. Vehicular signs shall not be attached to a vehicle so that the driver's vision is obstructed from any angle; ~~and~~
 - c. Signs, lights and signals used by authorized emergency vehicles shall not be restricted.
- (7) Vending machine signs where the sign is not larger than the normal dimensions of the machine to which the sign is attached.
- (8) Memorial signs or tablets when cut into any masonry surface or attached to a building when constructed of bronze or other metal up to six square feet as part of a building.
- (9) Any sign wholly within the confines of a building, and oriented to be out of view from outside the building.
- (10) Flags in a business or office zoning district. Each business property is allowed to install up to four flags on up to three flagpoles. ~~No more than one of the four flags may be a commercial flag, all other flags must be non-commercial. No business is allowed to install a commercial flag that is an off-premises sign.~~ Each flag may be no larger than 60 square feet in area. Flagpoles shall be no taller

than 40 feet in height nor higher than the highest point of the nearest principal building's roof on the premises.

- (11) Flags in a residential zoning district. Each residential property is allowed to install up to four ~~non-commercial~~ flags on up to three flagpoles. Each flag may be no larger than 40 square feet in area. Flagpoles shall be no taller than 25 feet in height nor higher than the highest point of the nearest principal building's roof on the premises.

Sec. 24-10. - Destroyed nonconforming signs.

An existing nonconforming sign in the City shall not be repaired or rebuilt in the case of obsolescence, dilapidation, or destruction by fire or other causes. In case of partial destruction by fire or other causes, where the cost of repairing the sign is less than 60 percent of the cost of installing a new sign of the same type at the same location, the City Manager or the City Manager's designee may issue a "no fee" permit for the necessary repairs to be made to the sign. If the necessary repairs are not completed within 60 days of the receipt of written notification to the responsible party by the City Manager or the City Manager's designee, then the sign shall be removed either by the responsible party or by the City at the responsible party's expense. Criminal or civil penalties may also be initiated against the responsible party as provided for in this chapter. If the cost of rebuilding or repair of an existing nonconforming sign exceeds 60 percent of the cost of installing a new sign of the same type at the same location, the sign shall be removed at the responsible party's expense. If the sign is not removed within 30 days of written notification to the responsible party, then it shall be removed by the City or its designated agent(s) at the responsible party's expense. A sign so removed under the provisions of this section shall be kept in storage for a period of 60 days, and if it is not claimed within said period, it may be disposed of in a lawful manner by the City.

Sec. 24-11. - Abandoned or discontinued signs.

An abandoned or discontinued sign is a sign that advertises a business or project that has ceased operations for more than one year, unless the property is leased, in which case the sign shall be removed after two years. The responsible party shall remove any sign and/or sign structure that has not been used for advertising or promoting a going concern for at least one year. For the purposes of this section, a business or project has ceased to operate when it is no longer engaged in the sale of products or services in the normal course of business. A violation of this section is an offense.

Sec. 24-12. - City Council sign approval.

- (a) On Loop 1604 frontage only and more than 150 feet from ~~N.W.~~NW Military Highway, the City Council may, at its sole discretion, approve pole/pylon signs within the following parameters: one sign per site with a maximum height of 48 feet from the top of the sign to the site grade, but not to exceed 25 feet above the adjacent driving lane of Loop 1604. This sign area shall not exceed 150 square feet per side (two sides maximum) and may be allowed in place of, or in addition to, any signs allowed by other provisions of this chapter. On a corner lot that qualifies for two monument signs the total sign area allowance may be adjusted up to 70/30 for the major artery, (i.e. A total of 100 square feet of sign area may be allocated 70 square feet on Lockhill Selma Road and 30 square feet on DeZavala Road.) Such reallocation shall be at the sole discretion of the City Council.
- (b) The City Council reserves the right to establish policies governing signage on City property.

Sec. 24-13. - Authority to enforce the ordinance; issue citation.

- (a) The City Manager is authorized by City Council to enforce this ordinance. The City Manager or the City Manager's designee shall review sign regulations, permit applications, nonconforming uses and destruction, and other requests under the ordinance unless otherwise defined by this section. Any final decision made by the City Manager may be appealed to the Board of Adjustment by the responsible party.
- (b) In this chapter the term "City Manager" also includes any person designated by the City Manager to act on behalf of the City Manager to carry out the enforcement of this ordinance ~~{from which this chapter derives}~~.
- (c) The City Code Compliance Officer (or such other individual or classification of individuals as may be designated by the City Manager) may issue a citation requiring the removal, relocation, or reconstruction of any sign which does not meet the spacing, height, and size requirements of this chapter and other City ordinances for which the installation began on or after the effective date of the ordinance from which this chapter is derived. All safety signs shall be approved by the City Code Compliance Officer.

Sec. 24-14. - Removal of prohibited bandit signs.

Bandit signs may be removed and discarded without notice notwithstanding any conflicting regulation or requirement within this section. These signs will not be stored by the City but will be discarded.

Sec. 24-15. - Variances.

- (a) *Purpose.* Any responsible party, business, or other organization desiring to install, continue to install, reinstall, relocate, alter, or use any sign which does not conform to the provisions of this chapter may make application to the Board of Adjustment for a variance to the provisions of this chapter.
- (b) *Application.* Application for a variance from the provisions of this chapter shall be made upon a form provided by the City Code Compliance Officer. The variance application shall include the application for a sign permit and shall also state the applicant's reasons for requesting the variance in accordance with the criteria set forth in this chapter.
- (c) *Fees.*
 - (1) The applicant shall pay the fee as prescribed in the most recent adopted fee schedule passed and approved by the City Council. The fee shall be nonrefundable. If work requiring a variance is begun/completed before obtaining approval for such variance, the owner of the property and/or the responsible party for the commencement of such work shall request approval of an "after-the-fact" variance and pay triple the established, nonrefundable fee. Payment of such fee does not relieve the applicant from liability under the penalty provisions of this chapter.
 - (2) Acceptance of the increased fee by the City does not constitute any commitment or warranty to approve the variance requested, nor does it relieve any responsible party from fully complying with the requirements of this chapter. A stop work order shall be in effect until a decision on approval/denial is taken. Fees shall not be refunded if the request for variance is disapproved.
- (d) *Hearing.* Upon receipt of a variance application, the City Secretary shall set a date for hearing before the Board of Adjustment within 45 days of receipt of an administratively complete variance request.
- (e) *Standards for variances.* The Board of Adjustment may approve a variance only if it makes affirmative findings, reflected in the minutes of the Board of Adjustment's proceedings, as to all of the following:
 - (1) The variance will not authorize a type of sign which is specifically prohibited by the chapter;
 - (2) The variance is not contrary to the goals and objectives outlined by the City;
 - (3) The variance is not contrary to the public interest;
 - (4) Due to special conditions applying to the land, buildings, topography, vegetation, sign structures, or other unique matters on adjacent lots or within the adjacent right-of-way, a literal enforcement of this chapter would result in

unnecessary hardship. Ordinarily, hardship that is self-induced or that is common to other similarly classified properties will not satisfy this requirement. Financial or economic hardship alone will not satisfy this requirement;

- (5) The spirit and purpose of this chapter will be observed and substantial justice done; and
 - (6) The applicant has not sought a variance from the City Council within the past 12 months.
- (f) *Conditions of variances.* The Board of Adjustment may impose such conditions or requirements in a variance as are necessary in the Board of Adjustment's judgment to achieve the fundamental purposes of this chapter. A violation of such conditions or requirements shall constitute a violation of this chapter. A variance, if granted, shall be for a specific event, use, or other applications of a business and shall not continue with the property. If a variance is granted and the sign so authorized is not substantially under construction within three months of the date of approval of the variance, the variance shall lapse and become of no force or effect.

Sec. 24-16. - Violations to be reported as nuisances.

It is an offense for a responsible party to install a sign in violation of this ordinance. Signs posted or installed in violation hereof are hereby declared to be public nuisances and such violations shall be reported promptly to the Chief of Police or City Code Compliance Officer.

Sec. 24-17. - Provisions cumulative.

This chapter shall be cumulative of all provisions of ordinances of the City of Shavano Park, Texas, except where the provisions of this chapter are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed. Any and all previous versions of this chapter to the extent that they are in conflict herewith are repealed.

Secs. 24-18—24-50. - Reserved.

ARTICLE II. - URBAN CORRIDOR SIGNAGE

Sec. 24-51. - Purpose.

Within the City's jurisdiction, there may be roadway corridors that have been and/or will continue to be very significant to the City. These corridors are amenities and assets of great value to the City, its inhabitants and its economy. The City Council aims to preserve, enhance and perpetuate the value of these roadway corridors and hereby authorizes the establishment of urban corridors.

Sec. 24-52. - Designation criteria.

To be designated as an urban corridor, an area must meet one or more of the following criteria:

- (1) The corridor serves as a recognized primary entryway to the City.
- (2) There is substantial commitment of private resources for development of at least 50 percent of the street frontage.
- (3) The corridor traverses residential areas where housing is present along at least 50 percent of the street frontage.

Sec. 24-53. - Designation process.

- (a) This article authorizes the establishment of urban corridors within the City's jurisdiction to regulate sign standards. Ordinances designating each urban corridor shall identify the designated street corridor and specify the sign standards for that corridor.
- (b) Application for designation of a specific urban corridor shall be initiated by submission to the City Manager of an application in compliance with ~~Sec. sections 24-54 through Sec. 25-58~~. After reviewing the application for its compliance with ~~sections Sec. 24-54 through Sec. 25-58~~, the City Manager shall forward any application found to be in compliance to the Planning ~~&and~~-Zoning Commission.
- (c) The Planning ~~&and~~-Zoning Commission shall hold one or more public hearings on a proposed urban corridor sign application and submit a recommendation to the City Council, and each public hearing shall be subject to the general notice standards that apply to zoning cases. The City Council shall also hold a public hearing prior to considering a proposed urban corridor sign application, which shall be subject to the general notice standards that apply to zoning cases.

Sec. 24-54. - Sign standards.

- (a) *General.* Ordinances establishing specific urban corridors may include requirements for ~~on- and off-premises~~ signs subject to the guidelines included herein. Specific corridor ordinances may include more or less restrictive standards for ~~off-premises~~

signs. All ~~off-premises~~ signs must be located solely within the specific urban corridors. In the event of a conflict between a specific corridor ordinance and other provisions of this Code, the specific corridor ordinance shall apply.

- (b) *Application.* As part of each application, the applicant must submit proposed terms and conditions for an Urban Corridor Signage Ordinance, subject to approval by both the City's ~~Planning and Zoning~~ Planning & Zoning Commission and City Council. The application shall be subject to negotiation and approval by the City's ~~Planning and Zoning~~ Planning & Zoning Commission and final revision and approval by City Council as provided herein. In such agreement between the City and such party or parties establishing a sign corridor with the City (collectively with the City the "Parties"), the Parties shall specifically provide the following in an Urban Corridor Signage Ordinance:
- (1) Agreement term;
 - (2) Terms for extensions;
 - (3) Replacement schedule;
 - (4) Technical drawing of proposed signage;
 - (5) Master component list for non-masonry components, including heights, widths, grades, finishes, and types of components;
 - (6) Lighting limitations, if any;
 - (7) Maintenance, including replacement of faded sign fronts; and
 - (8) Other information as follows:
 - a. Legal description and exhibit of the property on a scaled map sufficient to determine details showing the area to be included in the urban sign corridor;
 - b. An exhibit showing the location and type of each sign to be located within the urban corridor sign plan;
 - c. An exhibit showing the height of each sign and the sign area of each sign to be located within the urban corridor sign plan; and
 - d. An exhibit showing the architectural drawings for each sign to be located within the urban corridor sign plan.
- (c) *Acres limitation.* Such party or parties seeking to establish an urban corridor with the City must own or control by agreement with other property owners not less than 50 acres of real property eligible for commercial development and/or real property previously developed as commercial property located along the west side of Lockhill Selma ~~R~~oad or the within 600 feet of improved roadway for Loop 1604.
- (d) *Prohibited signs.* Unless expressly authorized by the City Council to create a unifying theme in a specific urban corridor, signs otherwise prohibited under this chapter are prohibited as urban corridor signage.

- (e) *Temporary signs.* The City Manager shall have the authority to issue permits and approve temporary signs as urban corridor signage within the following limitations:
- (1) Temporary signs shall only be displayed for a maximum of one continuous 90-day period beginning no earlier than 30 days from the date of the issuance of the certificate of occupancy;
 - (2) No more than three temporary signs shall be allowed during the continuous 30-day period noted above; and
 - (3) All temporary signs in total shall not exceed more than 200 square feet in sign area, including framing, trim and molding.

Sec. 24-55. - Corridor pole signs.

~~(a)~~—Corridor pole signs shall be designed with a uniform branding logo approved by the City Council comprised of materials specifically authorized in the Urban Corridor Signage Ordinance. Permitted pole signs shall be placed no more frequently than every 150 linear feet of street frontage. A pole sign shall not be erected closer than every 150 linear feet along one side of the street to another pole sign.

~~(b)~~—~~Except as provided in section 24-5(3) and as to signs erected prior to the date this article is adopted, signage permitted under subsection (a) is in lieu of all on-premises pole, pylon and monument signage unless otherwise allowed by the Urban Corridor Signage Ordinance.~~

Sec. 24-56. - Urban corridor sign plan.

The City Council, after receiving a recommendation from the ~~Planning and Zoning~~Planning & Zoning Commission, shall be responsible for approving the urban corridor sign plan, approving the urban corridor sign plan with conditions, or denying the urban corridor sign plan. In order for the ~~Planning and Zoning~~Planning & Zoning Commission and City Council to consider an urban corridor sign plan, the applicant must submit the materials and design information specified in ~~section~~Sec. 24-54 to the City Manager not less than 45 days prior to consideration by the ~~Planning and Zoning~~Planning & Zoning Commission.

Sec. 24-57. - Designation of the Loop 1604 urban corridor.

- (a) Location. The commercially zoned area fronting on the south right-of-way of Loop 1604 is hereby designated as the Loop 1604 urban corridor.
- (b) Tracts eligible for inclusion in the Loop 1604 urban corridor shall be those tracts which have a minimum of 1,000 feet of continuous frontage along Loop 1604.

- (c) The maximum height for a pole sign along Loop 1604 shall be ~~45-60~~ feet and a maximum of 12 feet for signage on any other street.
- (d) For ~~4560~~-foot signs, the maximum allowable sign area for each pole sign in this corridor shall be ~~350-680~~ square feet, and for all other signs, the maximum allowable sign area for each pole sign shall 200 square feet.
- ~~(e) Off-premise signs advertising businesses locations outside the City's city limits are prohibited in the Loop 1604 corridor.~~

Sec. 24-58. - Designation of the Lockhill Selma urban corridor.

- (a) Location. The commercially zoned area fronting on the west side of Lockhill Selma is hereby designated as the Lockhill Selma urban corridor.
- (b) Tracts eligible for inclusion in the Lockhill Selma urban corridor shall be those tracts, which have a minimum of 500 feet of continuous frontage along Lockhill Selma.
- (c) Within 100 feet of the City's city limits with the City of San Antonio, the maximum height for a pole sign in this corridor shall be 25 feet, and a maximum of 12 feet for any other signage.
- (d) The maximum allowable sign area for each pole sign in this corridor shall be 300 square feet.
- ~~(e) Off-premise signs advertising businesses locations outside the City's city limits are prohibited in the Lockhill Selma corridor.~~

ARTICLE III. - TABLES

Table No. 1 - Chart of Sign Design Standards

Type of Sign	Maximum Sign Area	Maximum Sign Height	Maximum Number of Signs	Permit Required	Conditions (Section Number)	Fee
All Districts						
Government signs	n/a	n/a	n/a	No Permit	24-9	No fee
Vending machine	Size of machine	Size of machine	Equal to number of	No Permit	24-9(7)	No fee

			machines on site			
Memorial signs	6 sq. ft.	n/a	n/a	No Permit	24-9(8)	No Fee
Residential Districts (A-1, A-2, A-3, A-4, A-5 PUD, MXD and CE)						
Neighborhood monument sign	60 sq. ft.	10 ft.	one	Permit required	24-6(6)	No fee
Flags-- noncommercial at	40 sq. ft.	Flagpole can be up to 25 ft.	four (on three flagpoles)	No permit	24-9(11)	No fee
Residential - subdivision sign	64 sq. ft.	10 ft.	One until completion of sale of 95 percent of lots	No permit	24-6(1)	No fee
Residential - 4 sq. ft. signs	4 sq. ft.	4 ft.	Two signs-- 1 allowed with a commercial message	No permit	24-6(3)	No fee
Residential - address (required)	n/a	n/a	One (required)	No permit	24-6(8)	No fee
Residential - temporary sign	6 sq. ft.	6 ft.	One sign up to 60 days	No permit	24-6(2)	No fee
Signs during the period	6 sq. ft.	6 ft.	One or Two signs	No permit	24-6(4)	No fee

that a property is for sale, rent or lease			depending on location			
Signs during voting periods	36 sq. ft. (one sign); 44 sq. ft. (aggregate)	6 ft.	Unlimited so long as aggregate is 44 sq. ft. or less	No permit	24-6(5)	No fee

Business and Office Districts

Construction development sign	128 sq. ft. (aggregate) no one sign larger than 64 sq. ft.		3 (up to 128 sq. ft. aggregate)-only allowed until Certificate of Occupancy	Permit required	24-5(1)	Based on sign area size
Temporary sign-post Certificate of Occupancy	64 sq. ft.		1-only allowed for 90 days after the Certificate of Occupancy	Permit required	24-5(2)	Based on sign area size
<u>Commercial Wall/Window sign</u> (multi-tenant with exterior access)	50 sq. ft. (aggregate)	Building height	One per window/exterior door	Permit required	24-5(5)a.	Based on sign area size

<u>Commercial Wall/Window</u> sign (multi-tenant with only interior access)	120 sq. ft. or 150 sq. ft. for up to three walls (aggregate)	Building height	Up to 3 wall signs per wall	Permit required	24-5(5)b.	Based on sign area size
<u>Wall/Window Commercial</u> sign (multi-tenant with only interior access) and Building larger than 30,000 square feet.	120 sq. ft. or 250 sq. ft. for up to three walls (aggregate)	Building height	Up to 5 wall signs total	Permit required	24-5(5)b.2.	Based on sign area size
<u>Commercial Wall/Window</u> sign (single tenant)	50 sq. ft. (aggregate)	Building height	One per window/exterior door	Permit required	24-5(6)	Based on sign area size
<u>Commercial Monument</u> signs (1604 Frontage)	150 sq. ft.	Varies by site elevation in relation to 1604	One or Two signs depending on location	Permit required	24-5(3)b.	\$200.00
<u>Commercial Monument</u> signs (NW Military)	55 sq. ft.	12 feet	One or two signs depending on location	Permit required	24-5(3)c.	\$200.00

Commercial Monument signs (All other locations)	50 sq. ft.	Varies by street frontage	One or two signs depending on location	Permit required	24-5(3)d.	\$200.00
Signs during the period that a property is for sale, rent or lease	64 sq. ft.		One or two signs depending on location	Permit required	24-6(4)	Based on sign area size
Flags-- noncommercial	60 sq. ft.	Flagpole can be up to 40 ft.	Four (three if a commercial flag is installed)	No permit	24-9(10)	No fee
Flags-- commercial (off-premises sign is prohibited)	60 sq. ft.	Flagpole can be up to 40 ft	one	No permit	24-9(10)	No fee

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

July 20, 2021

Lyle W. Cayce
Clerk

No. 20-50440

ETTA FANNING,

Plaintiff—Appellant,

versus

CITY OF SHAVANO PARK, TEXAS,

Defendant—Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:18-CV-803

Before CLEMENT, HAYNES, and WILSON, *Circuit Judges.*

PER CURIAM:*

Etta Fanning sued the City of Shavano Park for violating her First and Fourteenth Amendment rights via the City’s restrictions on yard signs and banners in Chapter 24 of the City’s Code of Ordinances (“Original Sign Code”). The Original Sign Code restricted the use of yard signs to one sign per yard and the use of banners to one week of the year (the same week as the

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 20-50440

“National Night Out” event), among other restrictions. The district court concluded that Fanning lacked standing on the one-sign issue but that she did have standing on the banner challenge. As to that challenge, it concluded that the Original Sign Code’s restrictions met the strict scrutiny requirements, determining that the limits were narrowly tailored and that the City had a compelling interest in aesthetics. It thus granted summary judgment to the City. After the district court’s ruling, the City amended the relevant ordinance, banning all banners (but allowing flags). As those amendments followed its summary judgment order, the district court did not have the opportunity to address them.

In addition to this key event (which, of course, does not alter the past but could alter prospective relief), a critical case from this court was decided while the appeal in this case was pending: *Reagan National Advertising of Austin, Inc. v. City of Austin*, 972 F.3d 696 (5th Cir. 2020), *cert. granted*, No. 20-1029, 2021 WL 2637836 (U.S. June 28, 2021). The district court did not have the benefit of considering *Reagan*, which addresses a number of points relevant to this case. While, of course, we have the ability to apply subsequent precedent to cases before us, this case is one where our general conclusion that we are a “court of review, not of first view,” applies. *Compare Concerned Citizens of Vicksburg v. Sills*, 567 F.2d 646, 649–50 (5th Cir. 1978) (noting that, when material changes of fact or law have occurred during the pendency of an appeal, it is our “preferred procedure” to remand and “give the district court an opportunity to pass on the changed circumstances” (quotations omitted)), *with Montano v. Texas*, 867 F.3d 540, 546–47 (5th Cir. 2017) (noting that we are a “court of review, not of first view” and remanding a matter not addressed by the district court for examination in the first instance (quotation omitted)). Accordingly, having fully considered the briefing and arguments of counsel as well as the pertinent

No. 20-50440

portions of the record, we VACATE the decision of the district court and REMAND for reconsideration in the first instance in light of *Reagan*.¹

¹ Given that the Supreme Court has now granted certiorari in *Reagan*, it would be acceptable if the district court concludes that it should stay the proceedings on remand until such time as the Court issues its opinion.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

July 20, 2021

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 20-50440 Fanning v. City of Shavano Park
USDC No. 5:18-CV-803

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and 5th Cir. R. 35, 39, and 41 govern costs, rehearings, and mandates. **5th Cir. R. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 and 5th Cir. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. 5th Cir. R. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

The judgment entered provides that each party bear its own costs on appeal.

Sincerely,

LYLE W. CAYCE, Clerk

A handwritten signature in cursive script, appearing to read "Nancy F. Dolly".

By: _____
Nancy F. Dolly, Deputy Clerk

Enclosure(s)

Mr. Charles S. Frigerio
Mr. Jerad Wayne Najvar
Mr. Eugene Volokh
Mr. Austin M.B. Whatley

PLANNING AND ZONING STAFF SUMMARY

Meeting Date: October 6, 2021

Agenda item: 11 & 12

Prepared by: Curtis Leeth

Reviewed by: Bill Hill

AGENDA ITEM DESCRIPTION:

11. Public Hearing - The purpose of the public hearing is to receive comments from members of the public regarding proposed amendments to Chapter 36 – ZONING of the City of Shavano Park Code of Ordinances to comply with H.B. 1475 of the 87th Texas Legislature, which changes Board of Adjustment authority related to variances and gives additional objective grounds for which a variance from a municipal zoning ordinance may be granted.

12. Discussion/ action - Possible amendments to Chapter 36 – ZONING of the City of Shavano Park Code of Ordinances to comply with H.B. 1475 of the 87th Texas Legislature - City Manager



Attachments for Reference:

- 1) 12a Board of Adjustment Amendments
- 2) 12b House Bill 1475

BACKGROUND / HISTORY: In the regular session of the 87th Texas Legislature, House Bill 1475 was signed into law and made effective September 1, 2021.

DISCUSSION: TML Summary follows:

In cities with zoning regulations, the Board of Adjustment (“BOA”) serves as the appellate body for certain zoning-related decisions. BOAs are authorized by state law to hear appeals of administrative decisions, decide whether or not to grant special exceptions to terms of the zoning ordinance, authorize variances from the zoning ordinance, and hear and decide “other matters” authorized under the city’s zoning ordinance. H.B. 1475 changes BOA authority related to variances and gives additional objective grounds for which a variance from a municipal zoning ordinance may be granted.

Zoning Variances: Then and Now

A BOA is authorized to grant a variance if, among other things, enforcing the ordinance as written would result in “unnecessary hardship.” The term, “unnecessary hardship” is not defined in state law, so over time courts have grappled with the sorts of facts that can constitute an “unnecessary hardship” and justify granting a variance. Until the passage of H.B. 1475, an unnecessary hardship would be one that was not self-imposed, personal in nature, related to the property for which the variance is sought, and not a solely financial hardship. The hardship needed to be a condition unique, oppressive, and not common to other property.

This changes the above analysis in a couple ways. It adds more objective criteria which a BOA can consider to determine whether compliance with a city’s zoning ordinance as applied to a

structure would result in an unnecessary hardship. For the first time, purely financial considerations can qualify an applicant for a variance. Additionally, if the proposed structure would be considered a nonconforming structure, that could be grounds to grant a variance. Those are two significant shifts in variance analysis, which allow an applicant to get over the “unnecessary hardship” hurdle a little more easily. Under the new law, there might be an unnecessary hardship if:

1. the cost of compliance with the zoning ordinance is greater than 50 percent of the appraised value of the structure as shown on the most recent certified appraisal roll; or
2. compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur; or
3. compliance would result in the structure not in compliance with a requirement of another city ordinance, building code, or other requirement; or
4. compliance would result in the unreasonable encroachment on an adjacent property or easement; or
5. the city considers the structure to be a nonconforming structure.

Keep in mind that to grant a variance, the variance must not be contrary to the public interest, and the spirit of the zoning ordinance must be observed. So even if a proposed structure fits an “unnecessary hardship” category above, granting the variance is not automatic. The facts surrounding each variance request still have to be analyzed by the BOA, but starting September 1, 2021, H.B. 1475 changes part of the analysis. Cities and their BOAs should look at their zoning rules, policies, documentation, and electronic or printed materials to make sure they are updated to reflect this change in state law and be ready for new arguments from zoning applicants in the fall.

Public notice for the Public Hearing was accomplished on September 15, 2021.

Staff prepared draft amendments to comply with H.B. 1475’s provisions regarding the interpretation of “unnecessary hardship” while leaving the Board of Adjustment’s criteria for granting variances intact (attachment 12a). This will maintain current City variance criteria while complying with Texas Law. For example the Board of Adjustment could decline a variance as being against the spirit of the zoning chapter even if the applicant showed unnecessary hardship as defined by state. The Board will continue to weigh the interest of neighbors (who may protest the variance) along with the property’s owner’s unnecessary hardship now defined by the State.

In addition City Attorney reviewed and proposed additional edits:

- Wordsmithing improvements in Sections 36-122, 36-125, 36-126 & 36-129
- Gender neutral term they/their
- Sec-125(d) made consistent to Sec. 36-126 (20 day limit to appeal a decision)

COURSES OF ACTION: Recommend approval of amendments; recommend additional amendments; or decline entirely and provide guidance to staff.

FINANCIAL IMPACT: N/A

MOTION REQUESTED: Recommend approval of amendments to Chapter 36 – ZONING of the City of Shavano Park Code of Ordinances to comply with H.B. 1475 of the 87th Texas Legislature.

ARTICLE V. - BOARD OF ADJUSTMENT

Sec. 36-122. - Organization.

There is hereby created a Board of Adjustment consisting of five members who are citizens of the City and who are not members of the City Council or the Planning and Zoning Commission, and who shall be appointed as described in Chapter 2, Article IV, Section 2-87. Positions shall exist for a term of two years, beginning on October 1 of each odd numbered year and ending on May 31 of the next succeeding odd-numbered year and continuing thereafter. Board members may be removable for cause by the City Council upon a written charge and after public hearing. The City Council shall confirm four alternate members of the Board of Adjustment who shall serve in the absence of one or more of the regular members when requested to do so by the Mayor. ~~a~~All cases to be heard by the Board of Adjustment will always be heard by a minimum number of four members. These All alternate members, when appointed, shall serve for the duration of the same term defined in this section ~~period as for~~ the regular members, and any vacancy shall be filled in the same manner and shall be subject to removal as the regular members.

Sec. 36-123. - Rules and meetings.

The Board of Adjustment shall adopt rules of procedure in accordance with the provisions of this section. Meetings of the Board of Adjustment shall be held at the call of the Chairperson, who shall be selected by the Board at its June meeting each year, and at such other times as the Board of Adjustment may determine. Such Chairperson, or in their absence the Acting Chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the Board of Adjustment shall be open to the public. The Board of Adjustment shall keep minutes to proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations, findings, and other official actions, all of which shall be immediately filed in the office of the City and shall be a public record.

Sec. 36-124. - Powers and duties.

The Board of Adjustment shall have the following powers:

- (1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official of the City in the enforcement of this chapter.

- (2) To authorize upon appeal in specific cases a variance from the terms of this chapter ~~asthat~~ will not be contrary to the public interest, ~~and~~, where, due to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship, and so that the spirit of this chapter shall be observed and substantial justice done.
- (3) To authorize special exceptions, in accordance with ~~Sec. section~~ 36-132, to a zoning standard applicable to particular types of development within any zoning district, which is consistent with the overall intent of the zoning regulations and for which express standards are prescribed, but that requires additional review to determine whether the development with the modification is compatible with adjoining land uses and the character of the neighborhood in which the development is proposed.
- (4) To hear and decide other matters authorized by the City Council.

Sec. 36-125. - Appeals to the Board of Adjustment (BOA).

- (a) Any of the following persons may appeal to the BOA a decision made by an administrative official that is not related to a specific application, address, or project under ~~C~~chapter 36 of this Code:
 - (1) A person aggrieved by the decision; or
 - (2) Any officer, department, board, or bureau of the municipality affected by the decision.
- (b) Any of the following persons may appeal to the BOA a decision made by an administrative official that is related to a specific application, address, or project under ~~C~~chapter 36 of the Code:
 - (1) A person who filed the application that is the subject of the decision; or
 - (2) A person who is the owner or representative of the owner of the property that is the subject of the decision; or
 - (3) Any person who is aggrieved by the decision and is the owner of real property within 200 feet of the property that is the subject of the decision; or
 - (4) Any officer, department, or board of the city affected by the decision.
- (c) Appeals to the BOA may be made by a person aggrieved by the decision of the building official on the basis of alleging an error in an order, requirement, decision or determination made by the building official in the enforcement of the international

and national codes as well as ~~C~~chapter 6 of the City of Shavano Park Code of Ordinances, as it exists or may be amended.

- (d) Such appeal shall be ~~taken~~ filed not later than the 20th day after an original decision, order, requirement, or determination has been rendered within a reasonable time, as provided by the rules of procedure of the Board of Adjustment, by filing in writing with the administrative official from whom the appeal is taken and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The administrative official from whom the appeal is taken shall forthwith transmit to the Board of Adjustment all papers constituting the record of the action that is appealed.

Sec. 36-126. - When appeal stays all proceedings.

~~An~~Once an appeal is filed it shall stay all proceedings in furtherance of the action appealed from, unless, after the time that notice of the appeal is filed, the administrative official from whom the appeal is taken certifies in writing to the Board of Adjustment ~~after notice of appeal shall have been filed with him~~ that by reason of facts stated in the certificate a stay would, in his-their opinion, cause immediate peril to life or property. ~~In such case proceedings~~Under this exception proceedings shall not be stayed other than by a restraining order, which may be granted by the Board of Adjustment, or by a court of record on application upon showing of due cause by the party filing for an appeal after notice to the administrative official from whom the appeal is taken and if due cause is shown.

Sec. 36-127. - Time for notice and hearing of appeal.

The appeal must be filed not later than the 20th day after the decision has been rendered. The BOA shall make a decision on the appeal at the next meeting for which notice can be provided following ~~the hearing~~ and not later than the 60th day after the date the appeal is filed. The Board of Adjustment shall fix a reasonable time for hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

Sec. 36-128. - Action on appeal.

In exercising the powers set forth in ~~section~~Sec. 36-124, the Board of Adjustment may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify the administrative official's order, requirement, decision, or determination appealed from and may make the correct order, requirement, decision,

or determination and to that end shall have all the powers of the administrative official from whom the appeal is taken.

Sec. 36-129. - Vote necessary for decision of board of adjustment.

The concurring vote of four members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision, or determination of an administrative official, to decide in favor of the applicant on any matter on which the Board is authorized~~it is required~~ to reverse an order, requirement, decision, or determination~~pass~~ under this chapter, or to authorize a variance from the terms of in this chapter.

Sec. 36-130. - Notice of public hearings before the Board of Adjustment.

The notice of public hearing, provided for in this section, shall be given by publication one time in the City's official newspaper, stating the time and place of such hearing, which time shall not be earlier than 15 days from date of such publication, and in addition thereto, the Board of Adjustment shall mail notices of such hearing to the petitioner and to all owners of property lying within 200 feet of any point of the lot or portion thereof, on which a variance or special exception is desired, and to all other persons deemed by the Board of Adjustment to be affected thereby; such owners and persons shall be determined according to the last approved tax roll of the City. Such notice may be served by depositing the same, property addressed and postage paid, in any post office.

Sec. 36-131. - Variances.

- (a) *Requests for variance.* All requests for variations from the terms of this chapter shall be in writing and shall specify the facts involved, the relief desired, and grounds therefore. Each such application shall be filed with the City Secretary who, after investigation, shall transmit such application together with his~~their~~ report to the Board of Adjustment within 30 days after receipt.
- (b) *Hearings on applications for variances.* The Board of Adjustment shall fix a reasonable time for the hearing of all applications for variances, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Any party may appear in person or by agent or by attorney at this hearing.
- (c) *Granting variances.* The Board of Adjustment is hereby authorized, upon a party's appeal from the decision of the City, to grant in specific cases a variance from the terms of this chapter that as will not be contrary to the public interest, and where

also, due to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship, and so that— the spirit of this chapter shall be observed and substantial justice is done. The Board of Adjustment may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:

- (1) The financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Sec. 26.01, Tax Code;
- (2) Compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur;
- (3) Compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
- (4) Compliance would result in the unreasonable encroachment on an adjacent property or easement; or
- (5) The municipality considers the structure to be a non-conforming structure.

(d) *Criteria for granting variances.* No variance can be granted unless:

- (1) Such variance will not be contrary to public interest.
- (2) Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance sought is located.
- (3) Such variance will not substantially or permanently injure the appropriate use of adjacent conforming property in the same district.
- (4) Such variance will not alter the essential character of the district in which it is located or the property for which the variance is sought.
- (5) Such variance will be in harmony with the spirit and purposes of this chapter.
- (6) The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property ~~and are not merely financial~~, and are not due to or the result of general conditions in the district in which the property is located.
- (7) The variance will not substantially weaken the general purposes of this chapter or the regulations herein established for the specified district.
- (8) The variance will not adversely affect the public health, safety or welfare of the public.

(e) *Limitation on variances.* Any variance authorized by the Board of Adjustment shall constitute authority to authorize the issuance of a building permit or a certificate of occupancy, as the case may be, if applied for within 120 days from the date of favorable action on the part of the Board of Adjustment, unless such Board of Adjustment authorizes a longer period. If the permit or certificate of occupancy ~~is~~ ~~shall~~ not be applied for within said 120-day period, or such extended period as the Board of Adjustment may have authorized, then the grant of the variance shall terminate. Such termination shall be without prejudice to a subsequent application to said Board of Adjustment in accordance with the rules and regulations regarding applications. No application to the Board of Adjustment shall be allowed on the same piece of property prior to the expiration of six months from a ruling of the Board of Adjustment on any application to such body unless other property in the same block within 200 feet thereof, within such six-month period, has been altered or changed by a ruling of the Board of Adjustment, in which case such change of circumstances shall permit the allowance of such application but in no way force in law to compel the Board of Adjustment, after a hearing, to grant such subsequent application, but, such application shall be considered on its merits as in all other cases.

Sec. 36-132. - Special exceptions.

- (a) *Applications for special exception.* All applications for special exceptions from the terms of the chapter shall be in writing and shall specify the facts involved, the special exception desired and grounds therefore. The property owner shall file such application with the City Secretary who, after investigation by the City Manager or ~~his~~-~~their~~ designee(s), shall transmit such application together with a report to the Board of Adjustment within 60 days after receipt. The non-refundable fee for an application shall be the same as the fee for an application for variance or as described in Appendix A - City of Shavano Park Fee Schedule.
- (b) *Hearings on applications for special exceptions.* The Board of Adjustment shall fix a reasonable time for the hearing of all applications for special exceptions, give public notice thereof, as well as due notice to all persons entitled to notice under ~~section~~Sec. 36-130, and such hearing shall be held within 90 days after receipt of the City Manager's report. At each hearing, any person may appear in person or by agent or by attorney.
- (c) *Granting special exceptions.* The Board of Adjustment may grant special exceptions to the side and rear setbacks provided for under this chapter and solely in accordance with the following:

- (1) Reduce the side or rear setbacks requirements in all single family residential zoning districts and all single family residential planned unit development zoning districts by up to 50 percent if the application satisfies the conditions provided for in subsections (d) and (e) and the side or rear setback in question abuts the following:
 - a. The streets of N.W. Military, and DeZavala;
 - b. City of San Antonio zoning districts;
 - c. O-1, B-1 or B-2 zoning districts; or
 - d. Greenbelts as designated on a plat.
- (d) *Conditions for granting special exceptions.* If the Board of Adjustment finds that all of the conditions in this subsection have been satisfied, the Board of Adjustment may approve the special exception application. This subsection's conditions are as follows:
 - (1) That the special exception will not endanger public health, safety, or general welfare;
 - (2) That the special exception will not be materially detrimental to public health, safety, or general welfare;
 - (3) That as of the hearing date, it is not foreseeable that the special exception will substantially impair or diminish the presently permitted neighborhood uses, values and enjoyment of neighboring properties;
 - (4) That the special exception will not significantly impede the normal and orderly development and/or improvement of surrounding properties as to uses permitted in the district and/or immediately contiguous district;
 - (5) That the special exception will not result in such property violating any height, lot coverage, building size and/or exterior requirements;
 - (6) That the special exception will not result in such property violating any district parking space regulations and/or tree preservation requirements;
 - (7) That the special exception will not result in such property being incompatible with other properties within the zoning district;
 - (8) That the conditions provided for in subsection (e) have been satisfied; and
 - (9) That any accessory building allowed under this subsection shall be neither larger than 500 square feet nor taller than 16 feet from the lowest grade point of such building.
- (e) *Conditions and guarantees.* In order to protect the public health, safety and general welfare of the community and prior to the granting of any special exception, the Board of Adjustment shall stipulate such conditions and restrictions upon the

establishment, location, construction, maintenance and operation of the special exception as deemed necessary in its sole discretion to protect the public health, safety and general welfare of the community and to secure compliance with the standards and requirements specified in subsection (d) above. When the Board of Adjustment grants a special exception, the Board of Adjustment shall require such evidence and written guarantees as it deems necessary as proof that the property owner has and/or will comply with all conditions stipulated in connection therewith.

- (f) *Effect of denial of application.* If the Board of Adjustment denies a special exception in whole or in part, the property owner must wait at least one year from the date of said denial to make a resubmission under this section.
- (g) *Failure to comply with conditions.* Should a property owner fail to comply with any conditions of the Board of Adjustment in granting a special exception to a property, the City shall seek appropriate enforcement and remedies as stated in [sectionSec. 36-5](#) of this chapter.

Sec. 36-133. - Appeals from the Board of Adjustment.

Any person, jointly or severally, aggrieved by any decision of the Board of Adjustment, or any taxpayer, or any officer, department, board of the City, may present to a court of record a verified petition as provided by Tex. Local Government Code § 211.011, setting forth that such decision is illegal, in whole or in part, specifying the grounds of illegality. Such petition shall be presented to the Court within ten days after the filing of the decision Board in the office of the City Secretary.

Sec. 36-134. - Fees.

The Board shall be empowered to assess and collect the fees specified in Appendix A - City of Shavano Park Fee Schedule to defray administrative costs. Such fees shall be deposited with the Secretary of the City, for deposit in the General Fund of the City.

AN ACT

relating to municipal board of adjustment zoning variances based on unnecessary hardship.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 211.009, Local Government Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) In exercising its authority under Subsection (a)(3), the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:

(1) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01, Tax Code;

(2) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur;

(3) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;

(4) compliance would result in the unreasonable encroachment on an adjacent property or easement; or

(5) the municipality considers the structure to be a

1 nonconforming structure.

2 SECTION 2. Section 211.009(b-1), Local Government Code, as
3 added by this Act, applies only to an appeal filed with a municipal
4 board of adjustment on or after the effective date of this Act.

5 SECTION 3. This Act takes effect September 1, 2021.

President of the Senate

Speaker of the House

I certify that H.B. No. 1475 was passed by the House on May 8, 2021, by the following vote: Yeas 133, Nays 6, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1475 was passed by the Senate on May 24, 2021, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

PLANNING AND ZONING STAFF SUMMARY

Meeting Date: October 6, 2021

Agenda item: 13

Prepared by: Curtis Leeth

Reviewed by: Bill Hill

AGENDA ITEM DESCRIPTION:

13. Discussion / action - Possible amendments to provide regulations for mobile food units and mobile food courts under Chapter 8 – BUSINESS AND BUSINESS REGULATIONS - City Manager

- | | | |
|----------|-----------------------------------|------------------------------------------------------|
| X | Attachments for Reference: | 1) 13a Mobile Food Court Regulations (CLEAN) |
| | | 2) 13b Mobile Food Court Regulations (TRACK CHANGES) |

BACKGROUND / HISTORY: Staff separated the discussion for Mobile Food Court/Units from the proposed amendments to the Tables of Uses. It is now a separate agenda item.

A growing trend is *mobile food courts* – a place where food trucks (mobile food units) congregate around a permanent structure to serve customers who eat outdoors, and often enjoy services (drinks, restrooms, clean-up) from the permanent structure as well as the trucks themselves. There is a potential mobile food court coming to the City of Shavano Park and current City ordinances are silent on mobile food courts or units.

DISCUSSION: **UPDATES** Staff research indicated a variety of approaches local cities are taking to regulating mobile food units or places they congregate long term (a mobile food court):

- **Boerne** regulates under Chapter 15, Article III - Peddlers, Canvassers and Solicitors (but does not address a gathering of food trucks)
- **New Braunfels** – regulates mobile food courts under Sec. 144-5.26
- **Helotes** bans food trucks entirely under Sec. 46-13
- **Alamo Heights** makes no mention in ordinances
- **San Antonio** regulations under Chapter 13, Article IV. (quite thorough)
- **Windcrest** makes no mention in ordinances
- **Schertz** regulations under Chapter 34, Article II (annual permit, but no mention of a food truck gathering)

Staff choose New Braunfels to build proposed Ordinance. It was selected because it was thorough (but not overly bureaucratic) and it directly addressed *mobile food courts* without requiring an elaborate permitting process (like Schertz / San Antonio).

Proposed Ordinances (item 6a) are structured as the permit standards for a Mobile Food Court City Council special use permit. Once the special use permit is given the Mobile Food Court would follow normal building permitting and Certificate of Occupancy inspections (for the permanent structure). Proposal also requires that Health and Fire inspections of all Mobile food units are required.

Note that in staff experience all Food trucks have a City of San Antonio or Bexar County health inspection. The only practical burden to staff would be fire inspections.

At the August 4, 2021 meeting, the Planning & Zoning Commission considered draft ordinance amendments, provided guidance to staff, but otherwise took no action.

At the September 1, 2021 meeting, the Planning & Zoning Commission considered draft amendments, provided guidance to staff, but otherwise took no action.

At the September 20, 2021 meeting, the City Council review the draft amendments while considering Table of Use amendments previously recommended by the Commission.

Based upon discussion from the September 1st meeting, and Council comments from September 20th meeting, Staff amended the draft ordinance language. Brief summary:

Note: The proposed amendments now look significantly different than previously because they are merged into Article III. Track changes are *all* changes to Article III. Highlighted changes are changes from the September meeting.

- Merged Mobile Food Court/Unit regulations in Chapter 8, Article III – FOOD ESTABLISHMENTS, rather than having ordinance in its own Article [Commission]
- Wordsmithing edits [Janssen / Fitzpatrick / Laws]
- Language to fix “loophole” in temporary gatherings of food trucks [Fitzpatrick]
- Added restroom facilities must be available for temporary gatherings [Linahan]
- Delete confusing “visual” integrity to be maintained [Maisel]
- All lighting associated with “mobile food court” rather than “occupancy” [Laws]
- Fixed the “seating no further than 10 feet;” now “no closer than 10 feet” [Janssen]
- Minor edits to improve the readability of amendments in the new Article
- Prohibit cooking from outside the food truck [Mayor]
- Prohibit overnight storage of food trucks in temporary congregation [Mayor]

- Prohibit taking a food truck off its wheels (think cinderblocks) in temporary congregation [Mayor]
- Added specific Noise regulation Section [Mayor]

COURSES OF ACTION: Recommend amendments as presented; provide additional amendments; or decline and give further guidance to staff.

FINANCIAL IMPACT: N/A

MOTION REQUESTED: Recommend amendments **as presented** to provide regulations for mobile food units and mobile food courts under Chapter 8 – BUSINESS AND BUSINESS REGULATIONS.

(specify additional amendments if warranted)

ARTICLE III. - FOOD AND FOOD ESTABLISHMENTS

Sec. 8-41. - Adoption of Texas Food Establishment Rules.

The City of Shavano Park adopts by reference the provisions of the current rule or rules as amended by the Texas Board of Health found in 25 Texas Administrative Code, Chapter 229, and Sections 161 through 171 and Sections 173 through 175 regarding the regulation of food establishments in this jurisdiction.

Sec. 8-42. - Definitions.

The following definitions shall apply in the interpretation and the enforcement of this article:

Food establishment shall mean a food service establishment, a retail food store, a mobile food court, a mobile food unit, and/or a roadside food vendor and includes those selling pre-packaged food items.

Food and beverage handler shall mean any person, including any cook, cook's helper, waiter, waitress, dishwasher, bartender, barmaid, bus boy, or other person, whether or not the owner of the establishment in which the activity is performed employs or pays any compensation to such person to perform such activity, who engages in the delivery, storing, preparation or dispensing or serving of food or beverages, as defined herein, for pots, pans, grills, skillets, plates, trays, eating utensils, or similar wares in, on or with which such food or beverage is prepared, dispensed or served.

Health Inspector shall mean the City Health Inspector or his authorized representative.

Mobile food court.

A mobile food court is a parcel of land designated and permitted to offer food or beverages for sale to the public from two or more mobile food units. All mobile food courts require a permanent structure for restroom facilities located on the parcel of land.

A mobile food court shall not be interpreted to include a congregation of mobile food units as a secondary, accessory use, and temporary use on existing commercially developed land. Congregations of mobile food units for longer than 12 hours on more than two consecutive days is prohibited. In addition, mobile food units in a temporary congregation shall not be stored overnight onsite or be taken off their wheels. The property owner must make permanent restroom facilities available to persons who purchase food or beverages from the food trucks in a temporary congregation.

Mobile food unit. A "mobile food unit" is a self-contained unit, either motorized or in a trailer on wheels that is readily movable, without disassembling, for transport to another location, and that serves the purpose of preparing and/or serving food and

beverages. The term "mobile food unit" shall not include individual non-motorized vending carts.

Permit shall be used to designate an annually renewed license to operate a food establishment issued by the City.

State Rules shall mean rules found in 25 Texas Administrative Code, Chapter 229, Sections 161 through 171 and Sections 173 through 175. These rules are also known as the Texas Food Establishment Rules.

Sec. 8-43. - Inspector.

- (a) *Health Inspector function created.* There is hereby created the function of Health Inspector in and for the City.
- (b) *Appointment.* The Health Inspector shall be selected by the City Manager followed by appointment by the City Council.
- (c) *Term.* The person appointed as Health Inspector shall serve in such office at the pleasure of the City Council.
- (d) *Duties.* The Health Inspector shall perform the duties required by the provisions of this Code, State law, and City Ordinances, rules and regulations.

Sec. 8-44. - Food manager certification required.

A food establishment shall employ at least one person assigned to each shift of 12 or fewer hours who:

- (1) Meets the "person in charge" definition found in the Texas Food Establishment Rules; and
- (2) Has a valid and current food manager's certificate issued by an accredited State of Texas Course. Certificates must be validated by the City.

The Health Inspector may require food and beverage handler certification if a food establishment has had its permit temporarily suspended for one or more health violations.

EXCEPTION: Volunteer and/or non-profit organizations that serve food on a temporary basis that will be in operation for less than five days.

Sec. 8-45. - Examination and condemnation of unwholesome or questionable food or drink.

- (a) Samples of food, drink and other substances shall be taken and examined by the Health Inspector as often as deemed necessary for the detection of unwholesomeness and deleterious qualities. The Health Inspector may condemn and forbid the sale of or cause to be removed or destroyed, any food or drink which is unwholesome or deleterious.
- (b) Any food which appears to the Health Inspector to be of a questionable nature from the standpoint of wholesomeness or possible deleterious quality may be held for further examination by attaching a "City of Shavano Park Retained" tag to the item(s). Food items which have been retained may not be removed or disturbed without the permission of the Health Inspector. The City Health Inspector shall promptly proceed by examination, laboratory or other wise to determine the wholesomeness of such food. As soon as such wholesomeness has been determined, such food must be immediately released. If however, such food is found to be unwholesome or deleterious, the Health Inspector must promptly condemn such food as herein stated and shall file a petition in a court of competent jurisdiction for injunction to restrain the owner from selling such condemned food and to obtain order for destruction of such unwholesomeness or deleterious food or drink.

Sec. 8-46. - Inspection of food establishments and mobile food units.

- (a) As often as deemed necessary for the proper enforcement of the provisions of this article, the Health Inspector, shall inspect every food establishment, and temporary food establishment, as defined by this article that is located within the City. See special provisions for mobile food units in subsection (d) of this section. In case of violations of any items of sanitation brought to the attention of the Health Inspector, he shall so advise the person in charge of the food establishment and shall make a second inspection after a lapse of such time as deemed sufficient for the violation to be corrected and the second inspection shall be used in determining compliance with the requirements of this article. Any violation of suspension of the permit by the Health Inspector.
- (b) In the interest of public clarification, the results from compiling the inspection report will be converted to a letter grade with the letter "A" being the highest level of food service operation. The criteria for the various certificates are:
 - (1) Grade "A"—Attain a sanitation score of 85 or above.
 - (2) Grade "B"—Attain a sanitation score between 70 and 84.
 - (3) Grade "C"—Below 70 on the sanitation inspection.
- (c) An inspection certificate shall be issued and a copy shall be posted by the Health Inspector at some conspicuous location on the premises where it will be clearly visible to all patrons. The certificate shall not be defaced or removed by any person except the Health Inspector.

- (d) All mobile food units, both those associated with a mobile food court or acting independently, shall comply with the following regulations:
- (1) All Mobile food units shall be registered, inspected, and permitted by the City of San Antonio Health Department, Bexar County Environmental Services Department or pass a City of Shavano Park Health Inspection. Health Safety permits from San Antonio, Bexar County and/or Shavano Park must be clearly posted to the public. If a mobile food unit is without an existing Health Safety permit as described above, the mobile food unit operator must follow the inspection standards of this section.
 - (2) All mobile food units where cooking or heating is conducted in the unit or a generator is used in association with the unit require a fire safety inspection from the City of Shavano Park Fire Marshal.
- (e) Violation of this section shall be a Class C misdemeanor punishable by a fine not to exceed \$200.00 per day that the certificate is removed, moved or defaced and/or suspension of the food establishment permit for 30 days. The Health Inspector shall permit the owner to correct any non-critical infractions within no more than 24 hours or less. If the Health Inspector determines that the infraction is of an immediate threat to the public health, there shall be no grace period for correction. Repeat violations may result in higher point deduction.

Sec. 8-47. Mobile food unit regulations

All mobile food units, both those associated with a mobile food court or acting independently, shall comply with the following regulations:

- (a) All setback requirements in the underlying zoning district shall be adhered to. No mobile food unit, structures associated with the mobile food court, nor any associated seating areas shall be located in a required zoning setback, buffer yard, access easement, drainage easement, floodplain, driveway, utility easement and/or fire lane(s).
- (b) There shall be at least ten feet of clearance between all individual mobile food units and at least ten feet of clearance from any mobile food unit to any structure.
- (c) Each mobile food unit and associated parking shall be located on an all-weather surface pad as approved by the building official.
- (d) The placement of the mobile food unit shall not impede traffic nor visually impair any motor vehicle operation within a parking lot, driveway or street.
- (e) Mobile food units shall provide at least 15 feet of clearance from any Fire Department connection or any fire hydrant.

(f) All mobile food units and related activities must be located in compliance with the city's adopted fire code standards regarding the storage or dispensing of flammable combustible liquid or gas.

(g) All food and beverage preparation shall take place within the mobile food unit.

Sec. 8-48. Mobile food court site regulations

Mobile food courts and all associated mobile food units shall comply with Sec. 8-47 and the following regulations:

- (a) No more than six individual mobile food units are permitted per mobile food court site.
- (b) Vehicular drive-through service of food and/or beverages shall not be permitted.
- (c) All mobile food unit seating must occur no closer than 10 feet from the associated mobile food unit or within a communal arrangement serving all of the mobile food units.
- (d) All activity must occur on private property outside of the public right-of-way.
- (e) A fire lane shall be provided within a mobile food court as required in the city's adopted fire code. No mobile food unit shall block access to the fire lane.
- (f) All lighting associated with the mobile food court shall comply with the Dark Sky Ordinance codified under Chapter 14, Article X. – OUTDOOR LIGHTING AFFECTING CAMP BULLIS.
- (g) Accessible restroom facilities shall be provided within a permanent structure. Porta-potties and trailer toilets are prohibited.
- (h) Electrical service may be provided to the mobile food units by a permitted temporary electrical connection (or other permitted connection) or on-board generators. All generators require inspection by the Fire Marshal.
- (i) A minimum of one 100-gallon garbage receptacle shall be provided for each mobile food unit. However, a sufficient quantity of garbage receptacles shall be provided and maintained so the mobile food court shall be free of trash, debris and litter at all times. The garbage receptacles shall be maintained in compliance with the Texas Food Code Chapter 229, including:
 - (1) Such receptacles are rodent-resistant. Unprotected plastic bags and paper bags, or baled units that contain materials with food residue may not be stored outside.
 - (2) Refuse, recyclables, and returnables shall be removed from the premises at a frequency that will minimize the development of objectionable odors and other conditions that attract or harbor insects and rodents.

Sec. 8-49. Mobile food court performance standards

Mobile food courts shall comply with the following regulations:

- (a) The structural integrity of the mobile food court units must be maintained continuously.
- (b) All signage shall comply with Chapter 24 - Signs.
- (c) A minimum of five parking spaces per mobile food unit shall be required.
- (d) The noise level of all operations at a Mobile Food Court shall not violate the provisions of Sec. 20-55 of the City of Shavano Park Code of Ordinances.
- (e) All mobile food court parking spaces and driveways shall comply with Sec. 32-19 of the City of Shavano Park Code of Ordinances.

Sec. 8-50. Mobile food court special use permit required

Application for a mobile food court special use permit shall be presented to the City Secretary on forms furnished by the city as follows:

- (a) A mobile food court permit is only a permit to indicate compliance with this section; a building permit and health permit must be obtained for the construction and operation of the identified improvements.
- (b) The mobile food court permit application shall include the following information:
 - (1) Completed mobile food court permit application form.
 - (2) Plans drawn to scale showing the location, dimensions, and specifications of proposed facilities as indicated in this section. Additional information to assist in determining compliance with this section may be required.
 - (3) A permit fee per Appendix A – City of Shavano Park Fee Schedule.

Sec. 8-51. - Permits.

It shall be unlawful for any person to operate a food establishment or temporary food establishment in the City who does not possess an unrevoked permit from the Health Inspector. Such permit shall be posted in a conspicuous place. Such permits are valid for one year and shall not be transferable from either one establishment at a different location or from one person to another person. All permits expire in October of each year. All permits must be renewed within 30 days after expiration or they will be suspended. See Sec. 8-50 for mobile food court special use permit requirements. See Sec. 8-46(d) for mobile food unit permit and inspection requirements.

Sec. 8-52. - Fees.

- (a) The annual permit fee and reinstatement after revocation fee to cover the City of Shavano Park's cost incurred in conjunction with the inspection of food establishments located within the City shall be paid prior to issuance of such permit. Fees shall be established as follows:

Number of Employees	Fee
1—3	\$100.00
4—6	\$200.00
7—10	\$300.00
11—20	\$400.00
21+	\$500.00
Temporary establishments, per event	\$50.00

- (b) If at any time during the period of validity of any such permit additional persons are employed by an establishment, it shall be the duty of the person in charge to immediately notify the City of Shavano Park and if such an increase in personnel brings the establishment into a higher permit fee bracket, they shall pay the City the additional sum required. This charge and the charge for new establishments that start during the year will be prorated based on a 12-month calendar and divided based on the months remaining during the year.
- (c) Mobile food units registered, inspected, and permitted by the City of San Antonio Health Department, Bexar County Environmental Services Department shall not be subject to any fees in this subsection.

Sec. 8-53. - Sanitation requirements.

- (a) *Food establishments generally.*

- (1) All food establishments shall comply with all of the sanitation provisions set out in 25 Texas Administrative Code, Chapter 229, and Sections 161 through 171 and Sections 173 through 175.

- (2) Whenever a food establishment is constructed or extensively remodeled and whenever an existing structure is converted to use as a food establishment, properly prepared plans and specifications for such construction, remodeling or conversions shall be submitted to the City for review before work is begun. Extensive remodeling means that 20 percent or greater of the area of the food establishment is to be remodeled. The plans and specifications shall indicate the proposed layout, equipment arrangements, mechanical plans and construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The City of Shavano Park will approve the plans and specifications if they meet the requirements of the rules contained in this article as well as the City of Shavano Park Code of Ordinances. Prior to opening for business, each new remodeled establishment will be inspected by the Health Inspector to insure compliance with this article.
- (b) *Disease control.* No person who is infected with any disease in a communicable form or is a carrier of such a disease shall work in any food establishment or temporary food establishment. All provisions of 25 Texas Administrative Code, Chapter 229, Section 171(o) and (p) shall be followed.
- (c) *Temporary food establishments.* Temporary food establishments shall be constructed and operated in an approved manner. The Health Inspector shall approve a temporary food establishment only if it complies with the provisions of 25 Texas Administrative Code, Chapter 229, Section 170(a) through (k).

Sec. 8-54. - Misdemeanor.

It shall be unlawful and constitute a misdemeanor for anyone to alter, deface, erase, obstruct or remove any card or notice posted by the regulatory authority or its authorized agent, for the purpose of enforcing this article or any of the food and sanitary laws and rules of the State of Texas or other applicable ordinances and regulations of the regulatory authority.

Sec. 8-55. - Violation; penalty.

- (a) Any person who violates any provisions of the State Rules and of this article shall, upon conviction, be guilty of a misdemeanor and shall be punished by a fine not exceeding \$2,000.00 and each and every day that the State Rules or the provisions of this article are violated shall constitute a separate and distinct offense.
- (b) As an additional remedy, the regulatory authority may seek any injunctive relief to which it may be entitled in law or in equity to enforce any of the provisions of this article.

Secs. 8-56—8-99. - Reserved.

ARTICLE III. - FOOD AND FOOD ESTABLISHMENTS

Sec. 8-41. - Adoption of Texas Food Establishment Rules.

The City of Shavano Park adopts by reference the provisions of the current rule or rules as amended by the Texas Board of Health found in 25 Texas Administrative Code, Chapter 229, and Sections 161 through 171 and Sections 173 through 175 regarding the regulation of food establishments in this jurisdiction.

Sec. 8-42. - Definitions.

The following definitions shall apply in the interpretation and the enforcement of this article:

Food establishment shall mean a food service establishment, a retail food store, a mobile food court, a mobile food unit, and/or a roadside food vendor and includes those selling pre-packaged food items.

Food and beverage handler shall mean any person, including any cook, cook's helper, waiter, waitress, dishwasher, bartender, barmaid, bus boy, or other person, whether or not the owner of the establishment in which the activity is performed employs or pays any compensation to such person to perform such activity, who engages in the delivery, storing, preparation or dispensing or serving of food or beverages, as defined herein, for pots, pans, grills, skillets, plates, trays, eating utensils, or similar wares in, on or with which such food or beverage is prepared, dispensed or served.

Health Inspector shall mean the City Health Inspector or his authorized representative.

Mobile food court.

A mobile food court is a parcel of land designated and permitted to offer food or beverages for sale to the public from two or more mobile food units. All mobile food courts require a permanent structure for restroom facilities located on the parcel of land.

A mobile food court shall not be interpreted to include a congregation of mobile food units as a secondary, accessory use, and temporary use on existing commercially developed land. Congregations of mobile food units for longer than 12 hours on more than two consecutive days is prohibited. In addition, mobile food units in a temporary congregation shall not be stored overnight onsite or be taken off their wheels. The property owner must make permanent restroom facilities available to persons who purchase food or beverages from the food trucks in a temporary congregation.

Mobile food unit. A "mobile food unit" is a self-contained unit, either motorized or in a trailer on wheels that is readily movable, without disassembling, for transport to another location, and that serves the purpose of preparing and/or serving food and

beverages. The term "mobile food unit" shall not include individual non-motorized vending carts.

Permit shall be used to designate an annually renewed license to operate a food establishment issued by the City.

State Rules shall mean rules found in 25 Texas Administrative Code, Chapter 229, Sections 161 through 171 and Sections 173 through 175. These rules are also known as the Texas Food Establishment Rules.

Sec. 8-43. - Inspector.

- (a) *Health Inspector function created.* There is hereby created the function of Health Inspector in and for the City.
- (b) *Appointment.* The Health Inspector shall be selected by the City Manager followed by appointment by the City Council.
- (c) *Term.* The person appointed as Health Inspector shall serve in such office at the pleasure of the City Council.
- (d) *Duties.* The Health Inspector shall perform the duties required by the provisions of this Code, State law, and City Ordinances, rules and regulations.

Sec. 8-44. - Food manager certification required.

A food establishment shall employ at least one person assigned to each shift of 12 or fewer hours who:

- (1) Meets the "person in charge" definition found in the Texas Food Establishment Rules; and
- (2) Has a valid and current food manager's certificate issued by an accredited State of Texas Course. Certificates must be validated by the City.

The Health Inspector may require food and beverage handler certification if a food establishment has had its permit temporarily suspended for one or more health violations.

EXCEPTION: Volunteer and/or non-profit organization[s] that serve food on a temporary basis that will be in operation for less than five days.

Sec. 8-45. - Examination and condemnation of unwholesome or questionable food or drink.

- (a) Samples of food, drink and other substances shall be taken and examined by the Health Inspector as often as deemed necessary for the detection of unwholesomeness and deleterious qualities. The Health Inspector may condemn and forbid the sale of or cause to be removed or destroyed, any food or drink which is unwholesome or deleterious.
- (b) Any food which appears to the Health Inspector to be of a questionable nature from the standpoint of wholesomeness or possible deleterious quality may be held for further examination by attaching a "City of Shavano Park Retained" tag to the item(s). Food items which have been retained may not be removed or disturbed without the permission of the Health Inspector. The City Health Inspector shall promptly proceed by examination, laboratory or other wise to determine the wholesomeness of such food. As soon as such wholesomeness has been determined, such food must be immediately released. If however, such food is found to be unwholesome or deleterious, the Health Inspector must promptly condemn such food as herein stated and shall file a petition in a court of competent jurisdiction for injunction to restrain the owner from selling such condemned food and to obtain order for destruction of such unwholesomeness or deleterious food or drink.

Sec. 8-46. - Inspection of food establishments and mobile food units.

- (a) As often as deemed necessary for the proper enforcement of the provisions of this article, the Health Inspector, shall inspect every food establishment, and temporary food establishment, as defined by this article that is located within the City. See special provisions for mobile food units in subsection (d) of this section. In case of violations of any items of sanitation brought to the attention of the Health Inspector, he shall so advise the person in charge of the food establishment and shall make a second inspection after a lapse of such time as deemed sufficient for the violation to be corrected and the second inspection shall be used in determining compliance with the requirements of this article. Any violation of suspension of the permit by the Health Inspector.
- (b) In the interest of public clarification, the results from compiling the inspection report will be converted to a letter grade with the letter "A" being the highest level of food service operation. The criteria for the various certificates are:
 - (1) Grade "A"—Attain a sanitation score of 85 or above.
 - (2) Grade "B"—Attain a sanitation score between 70 and 84.
 - (3) Grade "C"—Below 70 on the sanitation inspection.
- (c) An inspection certificate shall be issued and a copy shall be posted by the Health Inspector at some conspicuous location on the premises where it will be clearly visible to all patrons. The certificate shall not be defaced or removed by any person except the Health Inspector. ~~Violation of this section shall be a Class C misdemeanor punishable by a fine not to exceed \$200.00 per day that the certificate is removed,~~

~~moved or defaced and/or suspension of the food establishment permit for 30 days. The Health Inspector shall permit the owner to correct any non-critical infractions within no more than 24 hours or less. If the Health Inspector determines that the infraction is of an immediate threat to the public health, there shall be no grace period for correction. Repeat violations may result in higher point deduction.~~

(d) All mobile food units, both those associated with a mobile food court or acting independently, shall comply with the following regulations:

(1) All Mobile food units shall be registered, inspected, and permitted by the City of San Antonio Health Department, Bexar County Environmental Services Department or pass a City of Shavano Park Health Inspection. Health Safety permits from San Antonio, Bexar County and/or Shavano Park must be clearly posted to the public. If a mobile food unit is without an existing Health Safety permit as described above, the mobile food unit operator must follow the inspection standards of this section.

(2) All mobile food units where cooking or heating is conducted in the unit or a generator is used in association with the unit require a fire safety inspection from the City of Shavano Park Fire Marshal.

(e) Violation of this section shall be a Class C misdemeanor punishable by a fine not to exceed \$200.00 per day that the certificate is removed, moved or defaced and/or suspension of the food establishment permit for 30 days. The Health Inspector shall permit the owner to correct any non-critical infractions within no more than 24 hours or less. If the Health Inspector determines that the infraction is of an immediate threat to the public health, there shall be no grace period for correction. Repeat violations may result in higher point deduction.

Sec. 8-47. Mobile food unit regulations

All mobile food units, both those associated with a mobile food court or acting independently, shall comply with the following regulations:

(a) All setback requirements in the underlying zoning district shall be adhered to. No mobile food unit, structures associated with the mobile food court, nor any associated seating areas shall be located in a required zoning setback, buffer yard, access easement, drainage easement, floodplain, driveway, utility easement and/or fire lane(s).

(b) There shall be at least ten feet of clearance between all individual mobile food units and at least ten feet of clearance from any mobile food unit to any structure.

(c) Each mobile food unit and associated parking shall be located on an all-weather surface pad as approved by the building official.

- (d) The placement of the mobile food unit shall not impede traffic nor visually impair any motor vehicle operation within a parking lot, driveway or street.
- (e) Mobile food units shall provide at least 15 feet of clearance from any Fire Department connection or any fire hydrant.
- (f) All mobile food units and related activities must be located in compliance with the city's adopted fire code standards regarding the storage or dispensing of flammable combustible liquid or gas.
- (g) All food and beverage preparation shall take place within the mobile food unit.

Sec. 8-48. Mobile food court site regulations

Mobile food courts and all associated mobile food units shall comply with Sec. 8-47 and the following regulations:

- (a) No more than six individual mobile food units are permitted per mobile food court site.
- (b) Vehicular drive-through service of food and/or beverages shall not be permitted.
- (c) All mobile food unit seating must occur no closer than 10 feet from the associated mobile food unit or within a communal arrangement serving all of the mobile food units.
- (d) All activity must occur on private property outside of the public right-of-way.
- (e) A fire lane shall be provided within a mobile food court as required in the city's adopted fire code. No mobile food unit shall block access to the fire lane.
- (f) All lighting associated with the mobile food court shall comply with the Dark Sky Ordinance codified under Chapter 14, Article X. – OUTDOOR LIGHTING AFFECTING CAMP BULLIS.
- (g) Accessible restroom facilities shall be provided within a permanent structure. Porta-potties and trailer toilets are prohibited.
- (h) Electrical service may be provided to the mobile food units by a permitted temporary electrical connection (or other permitted connection) or on-board generators. All generators require inspection by the Fire Marshal.
- (i) A minimum of one 100-gallon garbage receptacle shall be provided for each mobile food unit. However, a sufficient quantity of garbage receptacles shall be provided and maintained so the mobile food court shall be free of trash, debris and litter at all times. The garbage receptacles shall be maintained in compliance with the Texas Food Code Chapter 229, including:

- (1) Such receptacles are rodent-resistant. Unprotected plastic bags and paper bags, or baled units that contain materials with food residue may not be stored outside.
- (2) Refuse, recyclables, and returnables shall be removed from the premises at a frequency that will minimize the development of objectionable odors and other conditions that attract or harbor insects and rodents.

Sec. 8-49. Mobile food court performance standards

Mobile food courts shall comply with the following regulations:

- (a) The structural integrity of the mobile food court units must be maintained continuously.
- (b) All signage shall comply with Chapter 24 - Signs.
- (c) A minimum of five parking spaces per mobile food unit shall be required.
- (d) The noise level of all operations at a Mobile Food Court shall not violate the provisions of Sec. 20-55 of the City of Shavano Park Code of Ordinances.
- (e) All mobile food court parking spaces and driveways shall comply with Sec. 32-19 of the City of Shavano Park Code of Ordinances.

Sec. 8-50. Mobile food court special use permit required

Application for a mobile food court special use permit shall be presented to the City Secretary on forms furnished by the city as follows:

- (a) A mobile food court permit is only a permit to indicate compliance with this section; a building permit and health permit must be obtained for the construction and operation of the identified improvements.
- (b) The mobile food court permit application shall include the following information:
 - (1) Completed mobile food court permit application form.
 - (2) Plans drawn to scale showing the location, dimensions, and specifications of proposed facilities as indicated in this section. Additional information to assist in determining compliance with this section may be required.
 - (3) A permit fee per Appendix A – City of Shavano Park Fee Schedule.

Sec. 8-~~5147~~. - Permits.

It shall be unlawful for any person to operate a food establishment or temporary food establishment in the City who does not possess an unrevoked permit from the Health Inspector. Such permit shall be posted in a conspicuous place. Such permits are valid for one year and shall not be transferable from either one establishment at a different location or from one person to another person. All permits expire in October of each year. All permits must be renewed within 30 days after expiration or they will be suspended. See Sec. 8-50 for mobile food court special use permit requirements. See Sec. 8-46(d) for mobile food unit permit and inspection requirements.

Sec. 8-~~5248~~. - Fees.

- (a) The annual permit fee and reinstatement after revocation fee to cover the City of Shavano Park's cost incurred in conjunction with the inspection of food establishments located within the City shall be paid prior to issuance of such permit. Fees shall be established as follows:

Number of Employees	Fee
1—3	\$100.00
4—6	\$200.00
7—10	\$300.00
11—20	\$400.00
21+	\$500.00
Temporary establishments, per event	\$50.00

- (b) If at any time during the period of validity of any such permit additional persons are employed by an establishment, it shall be the duty of the person in charge to immediately notify the City of Shavano Park and if such an increase in personnel brings the establishment into a higher permit fee bracket, they shall pay the City the additional sum required. This charge and the charge for new establishments that start during the year will be prorated based on a 12-month calendar and divided based on the months remaining during the year.

(c) Mobile food units registered, inspected, and permitted by the City of San Antonio Health Department, Bexar County Environmental Services Department shall not be subject to any fees in this subsection.

Sec. 8-~~5349~~. - Sanitation requirements.

(a) *Food establishments generally.*

(1) All food establishments shall comply with all of the sanitation provisions set out in 25 Texas Administrative Code, Chapter 229, and Sections 161 through 171 and Sections 173 through 175.

(2) Whenever a food establishment is constructed or extensively remodeled and whenever an existing structure is converted to use as a food establishment, properly prepared plans and specifications for such construction, remodeling or conversions shall be submitted to the City for review before work is begun. Extensive remodeling means that 20 percent or greater of the area of the food establishment is to be remodeled. The plans and specifications shall indicate the proposed layout, equipment arrangements, mechanical plans and construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The City of Shavano Park will approve the plans and specifications if they meet the requirements of the rules contained in this article as well as the City of Shavano Park Code of Ordinances. Prior to opening for business, each new remodeled establishment will be inspected by the Health Inspector to insure compliance with this article.

(b) *Disease control.* No person who is infected with any disease in a communicable form or is a carrier of such a disease shall work in any food establishment or temporary food establishment. All provisions of 25 Texas Administrative Code, Chapter 229, Section 171(o) and (p) shall be followed.

(c) *Temporary food establishments.* Temporary food establishments shall be constructed and operated in an approved manner. The Health Inspector shall approve a temporary food establishment only if it complies with the provisions of 25 Texas Administrative Code, Chapter 229, Section 170(a) through (k).

Sec. 8-~~540~~. - Misdemeanor.

It shall be unlawful and constitute a misdemeanor for anyone to alter, deface, erase, obstruct or remove any card or notice posted by the regulatory authority or its authorized agent, for the purpose of enforcing this article or any of the food and sanitary laws and rules of the State of Texas or other applicable ordinances and regulations of the regulatory authority.

Sec. 8-~~541~~. - Violation; penalty.

(a) Any person who violates any provisions of the State Rules and of this article shall, upon conviction, be guilty of a misdemeanor and shall be punished by a fine not

exceeding \$2,000.00 and each and every day that the State Rules or the provisions of this article are violated shall constitute a separate and distinct offense.

- (b) As an additional remedy, the regulatory authority may seek any injunctive relief to which it may be entitled in law or in equity to enforce any of the provisions of this article.

Secs. 8-5~~62~~—8-99. - Reserved.