

ORDINANCE NO. 333

AN ORDINANCE OF THE CITY OF MAGNOLIA, TEXAS, PROVIDING FOR THE CONSTRUCTION OR PLACEMENT OF BUFFERING WALLS BETWEEN PROPERTY USED FOR COMMERCIAL PURPOSES AND PROPERTY USED FOR RESIDENTIAL PURPOSES; PROVIDING MINIMUM REQUIREMENTS FOR SUCH STRUCTURES; PROVIDING A PENALTY OF AN AMOUNT NOT TO EXCEED \$2,000 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF; PROVIDING FOR SEVERABILITY; AND REPEALING CITY OF MAGNOLIA, TEXAS ORDINANCE NO. 279, PASSED AND APPROVED THE 12TH DAY OF SEPTEMBER, 2000.

* * * * *

WHEREAS, the City of Magnolia is experiencing substantial growth of commercial and industrial development within its corporate limits; and

WHEREAS, such commercial and industrial growth has increased noise and light pollution within the City which, when located adjacent to property used for residential purposes, has resulted in a disturbance of the peace and repose of the occupants of such residential properties; and

WHEREAS, the City Council deems it necessary and appropriate to balance the need for economic diversity with the need to provide a peaceful and enjoyable place for people to live; and

WHEREAS, the City Council hereby finds and determines that the placement and maintenance of sound and sight barriers between properties used for commercial and/or industrial purposes and those used for residential purposes is necessary for the preservation of public health, safety, and general welfare; now therefore,

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

Section 1. The facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct.

Section 2. Definitions. For the purposes of this Ordinance the following words, terms and phrases shall have the meanings ascribed thereto:

2.01 *Residential Property* shall mean any real property used for residential purposes, including single family, duplex, and multi-family dwellings, nursing homes, rest homes, group care homes, and assisted living homes, or any Residential Subdivision.

2.02 *Residential Subdivision* shall mean any platted subdivision, on file in the plat records of the County Clerk of Montgomery County, Texas, and pursuant to which the lots within the subdivision are restricted to a residential purpose included under the definition of Residential Property immediately above.

2.03 *Commercial Improvement* shall mean any structure, building, or edifice designed, constructed, or intended for use in conducting a commercial enterprise, but not including any activity which includes production, manufacturing, or assembly.

2.04 *Buffering Wall* shall mean a permanent structure which contains each of the following design features:

- 2.04.01 is not less than eight feet (8') in height or more than fourteen feet (14') in height;
- 2.04.02 is constructed of concrete, brick, stone, iron, wood or other similar solid opaque material;
- 2.04.03 is of such thickness and density as to provide the equivalent visual impediment and sound reduction as a six foot (6') high, six inch (6") thick, concrete block wall; and
- 2.04.04 is not a part of any building or structure constituting a Commercial Improvement.

2.05 *Affected Property* shall mean any real property within the corporate limits of the City of Magnolia, Texas, which abuts Residential Property.

2.06 *Temporary Buffering Wall* shall mean a temporary structure, not less than eight feet (8') in height nor more than fourteen feet (14') in height, which provides a solid visual barrier between any Commercial Improvement or Manufacturing Improvement and Residential Property.

2.07 *Vegetative Barrier* shall mean an evergreen vegetative barrier of such thickness, density and height as to provide the same impediment to sight as is required of a Buffering Wall as defined herein. The initial planting of a Vegetative Barrier shall be such that, with ordinary care and normal growth, it will reach the thickness, density, and height requirements required herein within three (3) years.

2.08. *Manufacturing Improvement* shall mean any structure, building, or edifice designed, constructed, or intended for use in the production, manufacturing, or assembly of goods.

Section 3. Temporary Buffering Wall. It shall be unlawful for any person to commence construction of a Commercial Improvement upon any Affected Property without having first erected a Temporary Buffering Wall. For the purposes hereof, dirt removal, grading, and other site preparation prior to any construction of permanent structures shall not be deemed as commencement of construction. No building permit for construction of any Commercial Improvement shall be authorized until compliance with the requirements of this Section. Such Temporary Buffering Wall shall be maintained by the applicant until completion and acceptance of the Buffering Wall as set forth in Section 4 below.

Section 4. Buffering Wall Required. It shall be unlawful for any person to occupy any Affected Property without having first erected a Buffering Wall adjacent to the common boundary between the Affected Property and any adjacent Residential Property. No certificate of occupancy for a Commercial Improvement or Manufacturing Improvement shall be issued until construction of a required Buffering Wall is complete and in compliance with the requirements of this Section.

4.01 *Location.* Such Buffering Wall shall be continuous for the entire length of the common boundary between a Residential Property and the Affected Property, or for such distance as is sufficient to obscure the commercial or manufacturing activity from any location on the Residential Property. For the purposes of this Section, an Affected Property that is separated from a Residential Property only by a public or private street, or a public or private utility or drainage easement, shall be nonetheless be deemed adjacent to the Residential Property. Notwithstanding the foregoing, nothing herein shall be construed as requiring the locating of a Buffering Wall (i) within any required yard (building set-back area) adjacent to a street as may be required by ordinances of the City, (ii) within a front yard (yard between a Commercial Improvement or Manufacturing Improvement and the street providing the primary means of access to the facility), or within a yard adjacent to a State Highway. Provided further, nothing herein shall be construed as requiring a Buffering Wall across any street or driveway necessary for reasonable access to the Commercial Improvement or Manufacturing Improvement.

4.02 *Maintenance.* A Buffering Wall shall be maintained by the owner of the Affected Property upon which the Buffering Wall is located for as long as the Affected Property is occupied.

4.03. *Exception.* Notwithstanding any other provision of this Ordinance to the contrary, a Vegetative Barrier may be used in lieu of a Barrier Wall between a Commercial Improvement and a Residential Property if an applicant can establish the following:

4.03.01. Distance and Topography. Due to the distance and topography separating a proposed Commercial Improvement and Residential Property, existing or proposed vegetation would provide the same level of visual screening as a Barrier Wall would provide if the Improvement were located at the building line nearest the Residential Property; or,

4.03.02. Non-noise Producing. If a Commercial Improvement is of a such type and nature, or if the associated-commercial use is contained within a building, such that noise production at the property line of an adjacent Residential Property would not exceed decibel levels normally produced from a Residential Property in the immediate vicinity, a Vegetative Barrier may be used if it provides the same level of visual screening as a Barrier Wall. Provided however, it shall be unlawful to change any such "non-noise producing" use to a noise producing use without having first erected a Barrier Wall as would otherwise be required herein; and

4.03.03. The initial planting of the Vegetative Barrier is such that, with ordinary care and normal growth, it will reach the thickness, density, and height requirements required herein within three (3) years, and such Vegetative Barrier is perpetually maintained in compliance with such requirements.

Section 5. Permitting Required; Procedures. It shall be unlawful for any person to cause or permit the construction or placement of any Temporary Buffering Wall, Buffering Wall, or authorized Vegetative Barrier, as required hereby, unless a permit has been issued therefor by the City building official, or to cause or permit the construction or placement of any such Temporary Buffering Wall, Buffering Wall, or authorized Vegetative Barrier, except in accordance with an issued permit. Permit procedures and fees shall be as required for buildings and structures pursuant to uniform building and construction codes of the City. Notwithstanding the foregoing, no such permit shall issue until the applicant therefor has submitted to the City

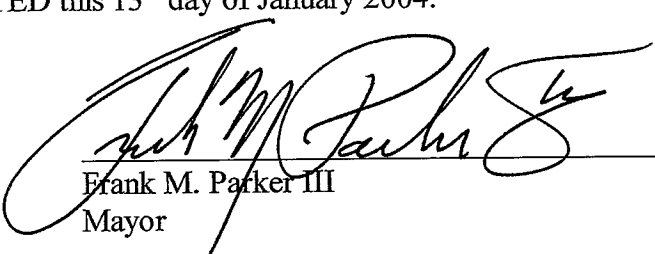
building official a detailed construction and site location plan, which shall show compliance with the provisions of this Ordinance. The determination of whether a Commercial Improvement qualifies for a Vegetative Barrier as herein provided shall be made by the City building official, subject to direct appeal to the City Council.

Section 6. Any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$2000. Each day of violation shall constitute a separate offense.

Section 7. In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Magnolia, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

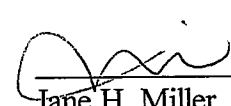
Section 8. City of Magnolia, Texas, Ordinance No. 279, as amended, originally passed and approved the 12th day of September, 2000, is hereby repealed. All other ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of any such inconsistency or conflict, hereby repealed.

PASSED, APPROVED, AND ADOPTED this 13th day of January 2004.



Frank M. Parker III
Mayor

ATTEST:



Jane H. Miller
City Manager/City Secretary

AFFIDAVIT OF PUBLICATION

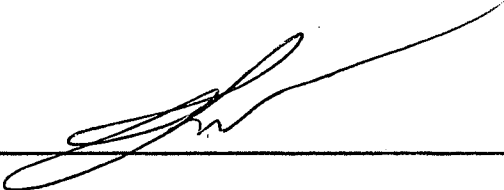
Before me, the undersigned authority, on this day personally appeared Denny O'Brien who on his oath stated:

CITY OF MAGNOLIA ORDINANCE 333

An Ordinance of the City of Magnolia, Texas, providing for the construction or placement of buffering walls between property used for commercial purposes and property used for residential purposes; providing minimum requirements for such structures; providing a penalty of an amount not to exceed \$2,000 for each day of violation of any provision hereof; providing for severability; and repealing City of Magnolia, Texas Ordinance No. 279, passed and approved the 12th day of September, 2000.

I am the Editor of the Tomball Magnolia Tribune, a newspaper published in Montgomery County, Texas and now the facts stated in this affidavit. The attached matter is a true and correct copy of the publication of the citation of which it purports to be a copy, as the same appeared in such newspaper in the respective issues of:

1-26, 2004
 , 2004


Denny O'Brien, Editor

Subscribed and sworn to this 27th day of January, 2004