

**ORDINANCE NO. O-2019-006**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
MAGNOLIA, TEXAS, AMENDING CHAPTERS 4, 5, 8, 14, AND ADDING  
A NEW APPENDIX C OF THE UNIFIED DEVELOPMENT CODE;  
PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE  
DATE AND PROVIDING FOR OTHER PROVISIONS.**

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**WHEREAS**, the City Council of the City of Magnolia, Texas has adopted a “Unified Development Code” (“UDC”) by ordinance No O-2015-018; and

**WHEREAS**, the City Council of the City of Magnolia Texas has studied the present provisions of the UDC regarding Jurisdiction and Enforcement, Design Standards and Definitions; and

**WHEREAS**, the City Council finds it necessary to amend certain sections in Chapters: (i) Chapter 4 “Design Standards”; (ii) Chapter 5 “Site Development and Design”; (iii) “Chapter 8 “Landscaping and Buffering; (iv) Chapter 14 “Word Usage, Measurements, Calculations and Definitions”; and adding a new Appendix “C”.

**WHEREAS**, the City Council hereby finds and determines that the all public notification and comment procedures and any required hearings under Texas State Law have been followed pertaining to the proposed amendments to the UDC.

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

**Section 1.** Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted as findings of fact and conclusions of law by the City Council and made a part hereof for all purposes.

**Section 2.** Chapter 4 of the Unified Development Code, Sec. 4-2-1.01, Purpose and Applicability is amended as shown in the attached Exhibit “A” and incorporated herein for all purposes.

**Section 3.** Chapter 5 of the Unified Development Code, Sec. 5-1-4.03 title is hereby amended as shown in the attached Exhibit “A” and incorporated herein for all purposes.

**Section 4.** Chapter 8 of the Unified Development Code, Sec. 8-2-1.02 Land Clearing and Tree Preservation, is hereby amended as shown in the attached Exhibit "A" and incorporated herein for all purposes.

**Section 5.** Chapter of the Unified Development Code is hereby amended by amending Article 14-3, Section 14.3.01 Land Use Definitions by amending the definition of "Land Plan" as shown in the attached Exhibit "A" and incorporated herein for all purposes.

**Section 6.** The Appendices is amended by adding a new Appendix C, as shown in the attached Exhibit "A" and incorporated herein for all purposes.

**Section 7.** Repealing Clause. All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed; provided, however, that such repeal shall be only to the extent of such inconsistency and in all other respects this ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered by this ordinance.

**Section 8.** Severability. It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance be severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences or sections of this ordinance, and the remainder of this Ordinance shall be enforced as written.

**Section 9.** Compliance Clause and Effective Date. The City Council finds, determines and declares that a sufficient written notice was posted and this Ordinance was passed in accordance with the Open Meetings Act. The City Secretary is instructed to publish this Ordinance in the Official Newspaper of the City of Magnolia in the manner provided and for the time required by Section 52.011(a) of the Local Government Code, at which time this Ordinance takes effect.

**PASSED, APPROVED and ADOPTED** by the City Council of the City of Magnolia, Montgomery County, Texas on this the 11<sup>th</sup> day of February 2020.



CITY OF MAGNOLIA, TEXAS

A blue ink signature of Todd Kana, Mayor of Magnolia, Texas.

Todd Kana, Mayor

ATTEST:

A blue ink signature of Lynne George, CPM, TRMC.  
Lynne George, CPM, TRMC  
City Secretary



# EXHIBIT A

## Chapter 4 Design Standards

### Article 4-2 Nonresidential and Mixed-Use Design Standards

#### Sec. 4-2-1.01 Purpose and Applicability

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- A. **Purpose.** The purpose of these design standards is to ensure that nonresidential and vertical mixed-use *development* includes high-quality, well-designed *buildings* and sites that contribute to the character and sustainability of the community.
- B. **Applicability.**
1. *Relationship to Other Standards.* The standards of this Section are in *addition* to all other standards of this UDC, unless the other standards specifically supersede them. *If any provision of this UDC conflicts with any other provision of this UDC, any other Ordinance of the City, or any applicable State or Federal law, the more restrictive provision shall apply unless it is preempted. As adopted by the Texas Legislature in 2019 H.B. 2439\*, (now chapter 3000, of the Texas Government Code). Please see Appendix C*
  2. *Relationship to Building Scale.* The standards are organized by building scale, as follows:
    - a. *Sites, Buildings, or Centers less than 12,000 square feet.* A single use site or a mixed-use or multi-tenant building or center with a gross floor area of less than 12,000 square feet shall comply with the provisions set out in *Section 4-2-1.02, Applicability to Development Types*.
    - b. *Sites, Buildings, or Centers greater than 12,000 square feet.* A single use site or a mixed-use or multi-tenant building or center with a gross floor area of greater than 12,000 square feet shall comply with the provisions set out in *Section 4-2-1.02, Applicability to Development Types*.

## Chapter 5 Site Development and Design

### Article 5-1 Subdivision Design and Land Development

#### Division 5-1-4 Classifications of Subdivisions

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#### Sec. 5-1-4.03 Major Modifications of Plats; ~~Change of Subdivision Name~~ Replats

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Major modifications of *plats* are any modifications that are not considered administrative plats under *Section 5-1-4.02, Administrative Plats*.

## Chapter 8 Landscaping and Buffering

### Article 8-2 General Landscaping Requirements

#### Division 8-2-1 Landscaping Requirements

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##### Sec. 8-2-1.02 Land Clearing and Tree Preservation

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**E. Land Clearing or Tree Removal Permit Required.** Any land clearing or protected tree removal in preparation of development or the redevelopment or substantial improvement of an existing property within the City shall require a permit as set out in *Chapter 11, Permits and Procedures*. A land clearing ~~and~~ **or** tree removal permit may be issued for the removal of trees that qualify under Subsection C., above, if it is demonstrated that:

1. No reasonable alternative site design at the same *density* and intensity could be approved that:
  - a. Would preserve a significant stand of trees or protected trees; or,
  - b. If large-scale preservation is not possible, would preserve the largest of the protected trees; or
  - c. If protection of the largest trees is not possible, would preserve a greater number of protected trees than the proposed development design.
2. Relocation of the trees to another location on-site or within the City is not practical or economically feasible;
3. The trees are replaced with the number of new trees for which credit would be given if the protected trees were preserved (see *Section 8-2-1.04, Credit for Existing Trees*).

## Chapter 14 Word Usage, Measurements, Calculations and Definitions

### Article 14-3 Definitions

#### Section 14-3.01 Land Use Definitions

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**Land Plan** refers to a **General Plan or Master Plan** ~~general master plan~~ for an area proposed for partial or complete subdivision. The ~~land~~ plan shows the proposed locations of land uses, streets, phasing of development, important physical features, and other applicable information for the entire area to be subdivided.

## APPENDICES

### Appendix C

#### H.B. 2439 (Chapter 3000 of the Texas Government Code)

##### GOVERNMENT CODE

##### TITLE 10. GENERAL GOVERNMENT

##### SUBTITLE Z. MISCELLANEOUS PROVISIONS PROHIBITING CERTAIN GOVERNMENTAL ACTIONS

##### CHAPTER 3000. GOVERNMENTAL ACTION AFFECTING RESIDENTIAL AND COMMERCIAL CONSTRUCTION

Sec. 3000.001. DEFINITIONS. In this chapter:

(1) "National model code" has the meaning assigned by Section [214.217](#), Local Government Code.

(2) "Governmental entity" has the meaning assigned by Section [2007.002](#).

Added by Acts 2019, 86th Leg., R.S., Ch. 1289 (H.B. [2439](#)), Sec. 1, eff. September 1, 2019.

Sec. 3000.002. CERTAIN REGULATIONS REGARDING BUILDING PRODUCTS, MATERIALS, OR METHODS PROHIBITED. (a) Notwithstanding any other law and except as provided by Subsection (d), a governmental entity may not adopt or enforce a rule, charter provision, ordinance, order, building code, or other regulation that:

(1) prohibits or limits, directly or indirectly, the use or installation of a building product or material in the construction, renovation, maintenance, or other alteration of a residential or commercial building if the building product or material is approved for use by a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building; or

(2) establishes a standard for a building product, material, or aesthetic method in construction, renovation, maintenance, or other alteration of a residential or commercial building if the standard is more stringent than a standard for the product, material, or aesthetic method under a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building.

(b) A governmental entity that adopts a building code governing the construction, renovation, maintenance, or other alteration of a residential or commercial building may amend a provision of the building code to conform to local concerns if the amendment does not conflict with Subsection (a).

(c) This section does not apply to:

(1) a program established by a state agency that requires particular standards, incentives, or financing arrangements in order to comply with requirements of a state or federal funding source or housing program;

(2) a requirement for a building necessary to consider the building eligible for windstorm and hail insurance coverage under Chapter [2210](#), Insurance Code;

(3) an ordinance or other regulation that regulates outdoor lighting that is adopted for the purpose of reducing light pollution and that:

(A) is adopted by a governmental entity that is certified as a Dark Sky Community by the International Dark-Sky Association as part of the International Dark Sky Places Program; or

(B) applies to outdoor lighting within five miles of the boundary of a military base in which an active training program is conducted;

(4) an ordinance or order that:

(A) regulates outdoor lighting; and



(B) is adopted under Subchapter B, Chapter [229](#), Local Government Code, or Subchapter B, Chapter [240](#), Local Government Code;

(5) a building located in a place or area designated for its historical, cultural, or architectural importance and significance that a municipality may regulate under Section [211.003](#)(b), Local Government Code, if the municipality:

(A) is a certified local government under the National Historic Preservation Act (54 U.S.C. Section 300101 et seq.); or

(B) has an applicable landmark ordinance that meets the requirements under the certified local government program as determined by the Texas Historical Commission;

(6) a building located in a place or area designated for its historical, cultural, or architectural importance and significance by a governmental entity, if designated before April 1, 2019;

(7) a building located in an area designated as a historic district on the National Register of Historic Places;

(8) a building designated as a Recorded Texas Historic Landmark;

(9) a building designated as a State Archeological Landmark or State Antiquities Landmark;

(10) a building listed on the National Register of Historic Places or designated as a landmark by a governmental entity;

(11) a building located in a World Heritage Buffer Zone; and

(12) a building located in an area designated for development, restoration, or preservation in a main street city under the main street program established under Section [442.014](#).

(d) A municipality that is not a municipality described by Subsection (c)(5)(A) or (B) may adopt or enforce a regulation described by Subsection (a) that applies to a building located in a place or area designated on or after April 1, 2019, by the municipality for its historical, cultural, or architectural importance and significance, if the municipality has the voluntary consent from the building owner.

(e) A rule, charter provision, ordinance, order, building code, or other regulation adopted by a governmental entity that conflicts with this section is void.

Added by Acts 2019, 86th Leg., R.S., Ch. 1289 (H.B. [2439](#)), Sec. 1, eff. September 1, 2019.

Sec. 3000.003. INJUNCTION. (a) The attorney general or an aggrieved party may file an action in district court to enjoin a violation or threatened violation of Section [3000.002](#).

(b) The court may grant appropriate relief.

(c) The attorney general may recover reasonable attorney's fees and costs incurred in bringing an action under this section.

(d) Sovereign and governmental immunity to suit is waived and abolished only to the extent necessary to enforce this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1289 (H.B. [2439](#)), Sec. 1, eff. September 1, 2019.

Sec. 3000.004. OTHER PROVISIONS NOT AFFECTED. This chapter does not affect provisions regarding the installation of a fire sprinkler protection system under Section [1301.551](#)(i), Occupations Code, or Section [775.045](#)(a)(1), Health and Safety Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 1289 (H.B. [2439](#)), Sec. 1, eff. September 1, 2019.

Sec. 3000.005. SEVERABILITY. If any provision of a rule, charter provision, ordinance, order, building code, or other regulation described by Section [3000.002](#)(a) is held invalid under this chapter, the invalidity does not affect other provisions or applications of the rule, charter provision, ordinance, order, building code, or other regulation that can be given effect without the invalid provision or application, and to this end the provisions of the rule, charter provision, ordinance, order, building code, or other regulation are severable.

Added by Acts 2019, 86th Leg., R.S., Ch. 1289 (H.B. [2439](#)), Sec. 1, eff. September 1, 2019.