

# *City of Kingsville, Texas*

---

## **AGENDA CITY COMMISSION**

**THURSDAY, FEBRUARY 13, 2014  
SPECIAL MEETING**

**HONORABLE ROBERT H. ALCORN COMMISSION CHAMBERS  
CITY HALL/200 EAST KLEBERG AVENUE  
4:00 P.M.**

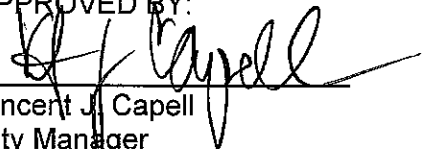
### **I. Preliminary Proceedings.**

#### **OPEN MEETING**

**INVOCATION / PLEDGE OF ALLEGIANCE -- (Mayor Fugate)**

**MINUTES OF PREVIOUS MEETING(S) -- Required by Law  
NONE**

APPROVED BY:

  
\_\_\_\_\_  
Vincent J. Capell  
City Manager

### **II. Public Hearing - (Required by Law).<sup>1</sup>**

1. None.

### **III. Reports from Commission & Staff.<sup>2</sup> (City Manager's Staff Report Attached).**

*"At this time, the City Commission and Staff will report/update on all committee assignments which may include, but is not limited to the following: Planning & Zoning Commission, Zoning Board of Adjustments, Historical Board, Housing Authority Board, Library Board, Health Board, Tourism, Chamber of Commerce, Coastal Bend Council of Governments, Conner Museum, Keep Kingsville Beautiful, and Texas Municipal League. Staff reports include the following: Building & Development, Code Enforcement, Proposed Development Report; Accounting & Finance -- Financial & Investment Information, Monthly Financial Reports; Police & Fire Department -- Grant Update, Police & Fire Reports; Street Updates; Public Works- Building Maintenance, Construction Updates; Park Services - grant(s) update, miscellaneous park projects, Administration --Workshop Schedule, Interlocal Agreements, Public Information, Hotel Occupancy Report, Quiet Zone, Proclamations, Health Plan Update, Tax Increment Zone Presentation, Main Street Downtown, Chapter 59 project, Financial Advisor. No formal action can be taken on these items at this time."*

### **IV. Public Comment on Agenda Items.<sup>3</sup>**

1. Comments on all agenda and non-agenda items.

**V.**

**Consent Agenda**

**Notice to the Public**

*The following items are of a routine or administrative nature. The Commission has been furnished with background and support material on each item, and/or it has been discussed at a previous meeting. All items will be acted upon by one vote without being discussed separately unless requested by a Commission Member in which event the item or items will immediately be withdrawn for individual consideration in its normal sequence after the items not requiring separate discussion have been acted upon. The remaining items will be adopted by one vote.*

**CONSENT MOTIONS, RESOLUTIONS, ORDINANCES AND ORDINANCES FROM PREVIOUS MEETINGS:**

*(At this point the Commission will vote on all motions, resolutions and ordinances not removed for individual consideration)*

**REGULAR AGENDA**

**CONSIDERATION OF MOTIONS, RESOLUTIONS, AND ORDINANCES:**

**VI. Items for consideration by Commissioners.<sup>4</sup>**

1. Workshop to discuss the proposed changes to City Planning ordinances regarding the Fence Code, Home Occupations Code, Accessory Use & Structures code, Street Trees, Rear Yards, and the International Property Maintenance Code. (Director of Planning & Development Services).

**VII. Adjournment.**

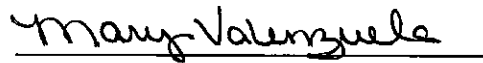
1. No person's comments shall exceed 5 minutes. Cannot be extended by Commission.
2. No person's comments shall exceed 5 minutes without permission of majority of Commission.
3. Comments are limited to 3 minutes per person. May be extended or permitted at other times in the meeting only with 5 affirmative Commission votes. The speaker must identify himself by name and address.
4. Items being considered by the Commission for action except citizens comments to the Mayor and Commission, no comment at this point without 5 affirmative votes of the Commission.

**NOTICE**

This City of Kingsville and Commission Chambers is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary's office at 361/595-8002 or FAX 361/595-8024 or E-Mail [mvalenzuela@cityofkingsville.com](mailto:mvalenzuela@cityofkingsville.com) for further information. Braille Is Not Available. The City Commission reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by the Texas Government Code, Section 551-071 (Consultation with Attorney), 551-072 (Deliberations about Real Property), 551-073 (Deliberations about Gifts and Donations), 551-074 (Personnel Matters), 551-076 (Deliberations about Security Devices), 551-086 (Certain Public Power Utilities: Competitive Matters), and 551-087 (Economic Development).

I, the undersigned authority do hereby certify that the Notice of Meeting was posted on the bulletin board in the City Hall, 200 East Kleberg, of the City of Kingsville, Texas, a place convenient and readily accessible to the general public at all times and said Notice was posted on the following date and time:

February 6, 2014 at 4:00 P.M. and remained so posted continuously for at least 72 hours preceding the schedule time of said meeting.



Mary Valenzuela  
City Secretary  
City of Kingsville, Texas

This public notice was removed from the official posting board at the Kingsville City Hall on the following date and time: \_\_\_\_\_

By: \_\_\_\_\_  
City Secretary's Office  
City of Kingsville, Texas

# **MINUTES OF PREVIOUS MEETING(S)**

# **REGULAR AGENDA**

# **AGENDA ITEM #1**



## Planning & Development Services Department

---

TO: Vincent Capell, City Manager  
FROM: Robert G. Isassi, P.E., Director of Planning & Development Services  
SUBJECT: **City Ordinance**  
DATE: February 5, 2014

---

Reference is made to direction given to City planning staff to evaluate and provide a comprehensive review of the City's current zoning and subdivision regulations. As previously relayed to your office, with the assistance of a planning and zoning consultant, the review revealed a number of existing codes that necessitate additional clarification by (1) adding new code language, (2) update existing codes, and (3) provide guidance on property maintenance.

To better clarify ordinances mentioned within the existing code, new code language has been drafted. This clarification enables City Code Enforcement staff, already in the field, the guidance and support needed to further administer existing ordinances. Furthermore, with the foresight to identify new and emerging technologies as they relate to zoning and subdivision regulations, new code language was drafted to keep the City of Kingsville at the forefront of municipal codes while also opening the door for future development options and opportunities.

This clarification also updated existing codes to address obsolete or impractical ordinances and provide clear and concise language.

The comprehensive review has identified the need to adopt a maintenance code. Over the past several years, the City has continued to pursue innovative and effective ways to address community appearance and property maintenance needs through fair and consistent enforcement. Throughout this time, the existing nuisance codes were used as a tool to educate and carry out this mission. As the environment continues to evolve, the codes have been necessitated to evolve as well. Staff, with the assistance of an independent consultant, identified the necessity to adopt the International Property Maintenance Code (IPMC) which is created by the International Code Council (ICC).

This ordinance update will reconcile and recommend amendments to the zoning, subdivision and property maintenance codes to address developing trends and issues in municipal settings. Additionally, the goal is to identify opportunities within the existing code to expand development opportunities and options while ensuring proper development that fits within the goals and objectives of the City of Kingsville.

This study has resulted in twelve (12) proposed code changes or new sections. Due to the complexity and volume of this proposed ordinance modification that the Planning & Zoning Commission as well as

the City Commission will be undertaking, it has been determined to be prudent to separate the dozen proposed changes into two groups. This memo contains the first six (6) of twelve (attached for your review).

#### 1. Fence Code

Reviewed and updated the existing fence code regulations, section 15-1-17, to ensure the language speaks to the current environment. Language shall include provisions pertaining to review and permitting prior to fence construction, expansion of the required maintenance of the fence, allowable materials to be used, etc.

#### 2. Home Occupation Code

Research and draft new code language (sec. 15-6-27) to allow and regulate types of home occupations as an accessory use within a permitted residential use. This is intended to ensure the uses are compatible with the surrounding residential uses and to ensure the activity will not cause detriment to the neighborhood. Currently no code language exists, however home occupations are defined in the code. This new code will create and/or expand on the listing of prohibited home occupations to ensure incompatible unauthorized uses are clearly defined, while also providing clear use guidelines and regulations of allowed uses based on their type.

#### 3. Accessory Use/Structure Code

Research and draft new code language (sec. 15-6-26) to regulate accessory structures and uses as subordinate uses to the primary use. Currently no code language exists, however accessory uses are defined in the code. A general listing of permitted accessory uses and structures have been drafted to clearly delineate the types of permitted and prohibited uses. This language also includes accessory structure provisions regulating building material types, location, etc.

#### 4. Street Tree Requirements in Developments

Create additional section (sec. 15-3-57) to include language pertaining to street trees as a required improvement within a subdivision, thereby referring to 15-3-30(N) for design. This will strengthen the requirement of street trees and design standards as prescribed in the Master Plan and the Comprehensive Housing Plan.

#### 5. Rear Yard Code

Update an obsolete code which stated that accessory buildings cannot be constructed if it abutted an alley.

#### 6. Nuisance Abatement & International Property Maintenance Code Review and Adoption

A review of existing code Ch. 9, Article 7 and detailed review of the IPMC has been performed to ensure language drafted is consistent, complimentary and enforceable. Additionally, code language has been proposed within Article 7 which adopts the IPMC by reference.



## **Staff Report to the PLANNING & ZONING COMMISSION and CITY COMMISSION**

by the Planning & Development Services Department, Planning Division  
City of Kingsville, Texas

**Request:** APPROVAL OF AN AMENDMENT TO CHANGE ARTICLE VI "ZONING" OF CHAPTER 15 "LAND USAGE", SPECIFICALLY THE CREATION OF A NEW SECTION, 15-6-28 "FENCE REGULATIONS", DEALING WITH NEEDED CODE LANGUAGE PERTAINING TO FENCE LOCATION, DESIGN AND MAINTENANCE TO COINCIDE WITH THE RECOMMENDED PRINCIPLES OF THE ADOPTED MASTER PLAN.

Petitioner and Agent: City of Kingsville  
Date of P&Z Hearing: February 12, 2014

### **EXHIBITS PRESENTED**

- Chapter 15 of the Kingsville Code of Ordinances (present at the meeting)
- City of Kingsville Master Plan

### **BACKGROUND AND PERTINENT DATA**

Over the past several months staff has been working toward a comprehensive review of the current zoning and subdivision regulations to identify areas that are outdated, or areas that are not appropriately addressed but are current issues or concerns within the community. Staff enlisted the assistance of a planning and zoning consultant to perform a full review and work with staff to prepare draft code language to address identified deficiencies. In performing this review, several areas of Article VI "Zoning" were identified. One area of deficiency that was identified by staff, and requested to be researched and created, was the creation of uniform fence regulations. Currently, the code only vaguely addresses the issue of fence maintenance. It was determined that a more comprehensive fence code was needed to ensure the safety and welfare of the residents while ensuring proper installation and maintenance is clearly outlined. As you are aware, community appearance is one of the City Commission top priorities and the proposed fence code regulations also address the aesthetic component of fences within the community.

As previously mentioned, currently the only section of code that addresses fences is 15-1-17 "Fence Maintenance". This code section is not consistent with current national and local government standards regarding fence regulations within municipalities. Specifically, it has deficiencies in the safe construction, location and maintenance of fences in both residential and non-residential districts. Research was performed by the consultant, in conjunction with city staff, wherein uniform fence regulations and codes of several similar sized cities in Texas were reviewed toward the creation of a tailored fence code for the City of Kingsville, Section 15-6-28 "Fence Regulations". This code is designed to prevent fences from creating an unsafe and unattractive presence, while instituting a low cost and streamlined permit process wherein a plan review service will be performed. This plan review will provide guidance and ensure safe construction similar to that of other structures within the City. Currently, no language exists that provides this comprehensive approach, and staff has identified it as a vital part to ensuring a safe environment that also promotes a high quality community appearance.

The proposed new language is also consistent with the principles and intent of the City of Kingsville Master Plan adopted in May of 2008. This new language will only effect newly installed fences, as all existing fences will be allowed to remain as a "legal non-conforming use" or "grandfathered" use, unless the fence is deemed a nuisance or is a safety hazard. If this determination is made, the fence in question will then require repair or replacement under the provision of the proposed code. Relief from the fence code is available via an application for a variance by the Zoning Board of Adjustment. The new proposed code language is as shown in the attached document.

**STAFF REVIEW & RECOMMENDATION**

City staff, including the City Attorney, has performed a thorough review of the proposed creation of the new code section, Section 15-6-28 "Fence Regulations", addressing needed updates pertaining to safe construction, location and maintenance of fences in both residential and non-residential districts. This new code section will also require a much needed fence permit/plan review service to the community. This new service will promote safe and appropriate fence construction, while limiting frustration by residents who might otherwise unknowingly construct a fence in an unsafe or unsatisfactory location; requiring costly modification or removal/replacement. Additionally, fence maintenance will be better defined and guidance will be provided to both residents and city staff pertaining to required fence maintenance.

Staff recommends **Approval** of the code amendment request.

Reviewed by:



Robert G. Isassi, P.E.  
Director of Planning & Development Services

## **15-6-28. Fence Regulations.**

(a) *Purpose.* The purpose of these regulations are to establish criteria for the location, maintenance and appearance of privacy fences and other visual barriers including landscaped hedges. The intent is to limit the amount of privacy fencing/barriers in order to promote the open, unencumbered characteristics of Kingsville and ensure the safe visibility of pedestrian and vehicular traffic.

(b) *Permit required.* Except as provided for single strand electrical wires herein, a fence permit shall be obtained and the required fee paid as set out in Section 15-1-6(B)(4) before installation of any fence. A site plan indicating the location of the proposed fence, property lines, setbacks and buildings, and a typical detail of the fence showing the material and general appearance of the fence shall be submitted with the permit request. All swimming pool permits are to be accompanied by a fence permit when an existing compliant fence is not present to prevent unwanted entry.

(c) For all property within the City, no person or business shall erect or maintain a sight obscuring fence forward from the front building line, excluding any and all porches, decks, patios or similar appurtenances, except where otherwise authorized by this code.

(d) Fences over three (3) feet in height and with more than 50% sight obscured shall be deemed to be a Sight-Obscuring Fence.

(e) In no case shall a sight-obscuring fence, hedge, tree or other visual barrier be placed or maintained in excess of three feet high within a Street or Driveway Intersection Sight Visibility Triangle as defined in Section 15-6-21 of this code of ordinances. Trees within a Street or Driveway Intersection Sight Visibility Triangle shall be kept trimmed so the tree canopy is no less than ten (10) feet high.

(f) Fences in residential areas shall not exceed four (4) feet in height in any front yard area and six (6) feet in height in any side or rear yard area. Nonresidential areas are restricted to a maximum of four (4) feet in the front yard area and a minimum of eight (8) feet in height in any side or rear yard area but shall not exceed ten (10) feet in height.

(g) Commercial or industrial buildings adjacent to residential properties shall install, at a minimum, an eight (8) foot high sight-obscuring fence constructed of a consistent solid material such as wood, brick or block. The fence shall be so constructed so that the finished side is facing the residential properties.

(h) Fences or hedges/landscape materials shall be required to screen storage areas allowed in all commercial and industrial districts and shall be of sufficient height to screen the storage from adjacent public right-of-way and adjacent properties. If screening is required to exceed eight (8) feet in height, then landscaping material shall be utilized to soften the impact and add to the screening. Trees that will grow to a sufficient height to screen storage from adjacent properties shall be utilized where the terrain is such that a screen exceeding ten (10) feet in height is needed.

(i) The height of a fence shall be measured from the highest adjoining finished grade.

(j) No fence shall be constructed within any drainage easement or floodway unless the City Engineer has advised the Building Official that the fence shall, in all probability, not interfere with or impair the natural flow of water across the drainage easement or floodway.

(k) *Fence design and maintenance.* All fences shall be designed, erected and maintained in accordance with Section 15-1-17 and also the following:

(1) All fences shall be maintained in good repair and in their original upright position so as to not be a nuisance. Fence remnants shall not remain if a repair or replacement of a fence or a portion of the fence is performed.

(2) No fence shall be maintained with protruding nails, boards, wires or other similar materials.

(3) All fences shall be constructed of a consistent material such as chain link, wood, concrete block, brick, stone, vinyl, wrought iron or other like material. The use of chicken wire, hog wire or any other similar type or quality of fencing is expressly prohibited.

(4) Missing boards, pickets or posts shall be replaced in a timely manner with material of the same type and quality.

(5) All fences shall be constructed with the finished side facing outward from the property or with both sides finished. Any and all posts and support beams shall not be visible from the neighboring properties or public right-of-way.

(6) Wood fences shall be constructed of material which is naturally resistant to insects and decay or has been treated to resist insects and decay underground.

(7) All posts used for any type of fencing shall be set in a concrete base.

(l) *Use of barbed wire fence.* In addition to and in conjunction with Section 13-1-2, no person shall erect or maintain any barbed wire fence except under the following circumstances:

(1) When the barbed wire fence is erected and maintained as an integral part of the security fence for nonresidential properties only, provided that the barbed wire is not maintained within six feet of the ground; or

(2) When the barbed wire fence is erected or maintained around a tract of land used for agricultural purposes as defined by the zoning laws of the City of Kingsville.

(3) In no case shall razor wire be permitted in any zone within City Limits except as used by official governmental agencies.

(4) In all cases barbed wire shall be strung tightly and shall not be suspended in a loose, coiled or concertina manner.

(m) *Use of electric fence.* No person shall erect or maintain any electrical fence unless in conformance with the following provisions:

(1) All electric fences shall comply with minimum specifications of the Underwriters Laboratories (UL listed) and shall be installed in accordance with the National Electric Code adopted by the City.

(2) Fences which may continuously conduct electric current may be allowed only on agricultural land to be used to raise livestock.

(3) Single-strand wires designed to conduct electricity through an approved low voltage regulator shall be allowed only along the interior base line of an otherwise permitted fence. No permit shall be required for the erection and maintenance of such single-strand electric wires.

(n) *Swimming Pools.* In addition to and in conjunction with Section 15-1-8, any swimming pool area, where the pool depth is two (2) feet or more, shall be entirely enclosed by a protective fence or other permanent structure at least four (4) feet in height, with locked gates or entrances. A permanent fence shall be in place during construction of any pool. Arrangements may be made with the chief Building Official to provide a temporary section of fence during pool construction to allow for ingress and egress. A sight-obscuring or other approved fence constructed on the property lines adjacent to the pool may be considered a protective fence meeting these requirements.

(o) *Temporary fences.* Permits for temporary fences for the purpose of protecting or securing of construction sites may be granted for a one year renewable period. Such temporary fencing must be removed upon completion of construction.

(p) *Penalties.*

(1) The provisions of this subsection shall be cumulative of any criminal penalties or civil remedies as prescribed in 15-1-17(G) of Chapter 15 or section 1-1-99 of this Code of Ordinances.

(2) Upon a determination that a fence code violation exists upon a premises, the owner of the premises shall be given notice to abate such violation within 30 days after the receipt of such notice.

## **Staff Report to the PLANNING & ZONING COMMISSION and CITY COMMISSION**

by the Planning & Development Services Department, Planning Division  
City of Kingsville, Texas

**Request: APPROVAL OF AN AMENDMENT TO CHANGE ARTICLE VI “ZONING” OF CHAPTER 15 “LAND USAGE”, SPECIFICALLY THE CREATION OF A NEW SECTION, 15-6-27 “HOME OCCUPATIONS”, DEALING WITH NEEDED CODE LANGUAGE PERTAINING TO ALLOWED “WORK FROM HOME” ACCESSORY USES WITHIN RESIDENTIAL ZONING DISTRICTS.**

Petitioner and Agent: City of Kingsville  
Date of P&Z Hearing: February 12, 2014

### **EXHIBITS PRESENTED**

- Chapter 15 of the Kingsville Code of Ordinances (present at the meeting)
- City of Kingsville Master Plan

### **BACKGROUND AND PERTINENT DATA**

In conjunction with the comprehensive review of the current zoning and subdivision regulations, it was identified there is a need for regulations pertaining to home occupations or “work from home” activities. Home occupation uses are permitted as an accessory to the principal use, but due to the numerous types of activities that can be allowed as a home occupation, it is customary that a separate section be created. This allows the home occupation code to work in conjunction with section 15-6-26 “Accessory Uses and Structures,” while clearly defining the intricacies associated with home occupations.

As with the other proposed code amendments, this type of use is not currently addressed within the zoning code and staff requested that it be researched and created for consideration. Much like with accessory uses and structures, the code defines a home occupation; however it doesn’t provide guidance as to what types of uses are allowed. Specifically identifying the permitted uses allows for the full appropriate use of a property while also ensuring permitted home occupations will not be detrimental to the neighboring properties or neighborhood.

As technologies continue to advance, and work activities can regularly be performed on a remote basis, home offices and/or business operations are shifting more and more into residential areas. While many of these uses are confined to the home or garage, some can create a detrimental impact to the neighborhood. There have been historical cases wherein incompatible uses associated with “work at home” activities have created a harmful impact on neighboring properties and/or neighborhoods. Currently there are very limited provisions that regulate these types of uses and it has created confusion and frustrations for residents and staff alike as broad interpretations are forced upon staff to permit and/or prohibit these types of uses.

As previously mentioned, currently no code language exists that provides a listing of permitted or prohibited home occupations as accessory uses on properties within the City. The proposed code section, 15-6-27 “Home Occupations,” provides a clear purpose and listing of allowed and prohibited home occupation uses. It also provides guidance and definition as to the location, types and uses within the home

or accessory structure such as a garage. This code is specifically designed to perform as described in the code excerpt below:


- Establishes criteria for the operation of home occupations in dwelling units within residential districts;
- Permits and regulates the conduct of home occupations as an accessory use in a dwelling unit, whether owner or renter occupied;
- Ensures that such home occupations are compatible with, and do not have a harmful effect on, adjacent and nearby residential properties and uses;
- Ensures that public and private services, such as streets, sewers, or water or utility systems, are not burdened by the home occupation to the extent that usage exceeds that normally associated with residential use;
- Allows residents of the community to use their residences as places to enhance or fulfill personal economic goals, under certain specified standards, conditions, and criteria;
- Enables the fair and consistent enforcement of these home occupation regulations; and;
- Promotes and protects the public health, safety, and general welfare.

The proposed new language is consistent with the principles and intent of the City of Kingsville Master Plan adopted in May of 2008. This new language will not only define specific allowed uses and forewarn individuals of prohibited uses within certain zoning districts; it will also ensure proper sustainable and safe operation of home occupations. The new proposed code language is as shown in its entirety in the attached document.

#### **STAFF REVIEW & RECOMMENDATION**

City staff, including the City Attorney, has performed a thorough review of the proposed creation of the new code section, Section 15-6-27 "Home Occupations". This section addresses the needed code language pertaining to the appropriate guidelines and provisions for allowed home occupations as an accessory use, while also delineating prohibited uses that are incompatible, unsafe and/or a detriment to the neighboring properties. Additionally, the current zoning code defines home occupations but does not provide a listing of permitted/prohibited uses. This code will provide the public and city staff added code language that will be a resource in enhancing the uses of property, while appropriately ensuring home occupation uses meet the permitted use requirements and ensure the safety and welfare of the community.

Staff recommends **Approval** of the code amendment request.

Reviewed by:  , PE  
Robert G. Isassi, P.E.  
Director of Planning & Development Services

## **Sec. 15-6-27. Home occupations.**

(A) *Purpose and findings.* A home occupation is defined as an accessory use carried out by the occupants for compensation in a residential dwelling unit. This section:

- Establishes criteria for the operation of home occupations in dwelling units within residential districts;
- Permits and regulates the conduct of home occupations as an accessory use in a dwelling unit, whether owner or renter occupied;
- Ensures that such home occupations are compatible with, and do not have a harmful effect on, adjacent and nearby residential properties and uses;
- Ensures that public and private services, such as streets, sewers, or water or utility systems, are not burdened by the home occupation to the extent that usage exceeds that normally associated with residential use;
- Allows residents of the community to use their residences as places to enhance or fulfill personal economic goals, under certain specified standards, conditions, and criteria;
- Enables the fair and consistent enforcement of these home occupation regulations; and;
- Promotes and protects the public health, safety, and general welfare.

(B) *Applicability.* This section applies to:

(1) Any occupation, profession, or business activity customarily conducted entirely within a dwelling unit and carried out by a member of the family residing in the dwelling unit, and which occupation, profession or business activity is clearly incidental and subordinate to its primary use as a residential dwelling and does not change the character of the dwelling unit. A home occupation is an accessory use to a dwelling unit.

(2) No home occupation, except as otherwise provided in this section, may be initiated, established, or maintained in the unit unless it is in conformance with the regulations and performance standards set forth in this section. A home occupation shall be incidental and secondary to the use of a dwelling unit for residential purposes.

(C) *Exempt Home Occupations.* The activities listed in subsection 15-6-27(C),(1) through (4) below, are not subject to this section, provided that all persons engaged in such activities reside on the premises:

- (1) Artists, sculptors, and composers not selling their artistic product to the public on the premises;
- (2) Craft work, such as jewelry-making and pottery, with no sales permitted on the premises;
- (3) Home offices with no client visits to the home permitted;
- (4) Telephone answering and message services.

(D) *Permitted Home Occupations.* The home occupations permitted in subsection (1), below, are allowed in a residential setting because they do not compromise the residential character of an area, do not generate conspicuous traffic, do not visually call unusual attention to the home, and do not generate noise of a nonresidential level. A home occupation is permitted as an accessory



use in the districts, as shown in Appendix A, (Section 1, Land Use Chart) and in the Planned Unit Development and/or Mixed Use (MU) districts

(1) The following home occupations are permitted and subject to the standards established in this section:

- (a) Accounting, tax preparation, bookkeeping, and payroll services (North American Industry Classification System (NAICS) 5412; Land Based Classification Standards (LBCS) Function 2412;
- (b) Baking and cooking (NAICS 3118; LBCS 2151);
- (c) Catering (NAICS 72232; LBCS 2560);
- (d) Child care (NAICS 6244; LBCS 6562);
- (e) Computer repair and training (NAICS 611519);
- (f) Computer systems design and related services (NAICS 5415);
- (g) Computer training (NAICS 61142; LBCS 6143);
- (h) Drafting services (NAICS 54134);
- (i) Engineering, architecture, land planning and landscape architects (NAICS 5413; LBCS 2413);
- (j) Financial planning and investment services (NAICS 52393; LBCS 2250);
- (k) Fine arts studio (creation of individual works only, no mass production) provided that no machinery or equipment shall be used or employed other than that which would customarily be found in the home, including machinery or equipment that would ordinarily be employed in connection with a hobby or avocation not conducted for gain or profit (NAICS 7115, 7121);
- (l) Hair salon, barbering, hairdressing, and other personal care services, provided only one person may conduct such activity (NAICS 8121);
- (m) Information and data processing services (NAICS 51421; LBCS 4240) (includes Standards Industrial Classification (SIC) 7374 computer processing and data preparation and processing services, and SIC 7379 computer related services, National Electric Code (NEC)) (CD or DVD conversion and recertification)
- (n) Insurance sales (NAICS 52421; LBCS 2240);
- (o) Interior decoration (no studio permitted) (NAICS 54141; LBCS 2414);
- (p) Internet/Mail order business (order taking only; no stock-in-trade) (NAICS 4541) (e.g. Mary Kay, Pampered Chef, etc.) provided parties for the purpose of selling merchandise or taking orders shall not be held more than once a month, shall be limited to ten customers and shall be held between the hours of 9:00am and 10:00pm;
- (q) Legal services (NAICS 5411; LBCS 2411);
- (r) Musical instruction, voice, or instrument (NAICS 61161);
- (s) Musical instrument tuning and repair (NAICS 811211, 81149, 4511);
- (t) Offices for professional, scientific, or technical services (NAICS 54; LBCS 2400) or administrative services (NAICS 5611; LBCS 2420);
- (u) Photographic and Video services (NAICS 54192);
- (v) Professional, Scientific and Technical Services, including the practice of law (NAICS 54);
- (w) Real estate services and appraisal (NAICS 531);
- (x) Tailoring (e.g. dressmaking and alterations) services (NAICS 81149; 3152);

(y) Teaching of arts and crafts and incidental sale of supplies to students (NAICS 611691);

(z) Tutoring (NAICS 611691).

(aa) Work-at-home and/or telecommuting activities where employees of a business perform work for the business in their own residence, for an employer located at another location; provided all physical contact between the business and the employee occurs at the place of business and not the residence, other than the initial installation of any equipment or other work facilities. The work activities of the employee shall conform to all other requirements of this section.

*(E) Use limitations and performance standards.*

(1) Home occupations shall be carried out by members of the household occupying the dwelling and no more than one nonresident employee shall be permitted.

(2) The home occupation shall be conducted entirely within the principal residential building or in a permitted accessory building.

(3) The home occupation use shall be clearly incidental and secondary to the residential occupancy.

(4) No more than six clients per day (limit one visit per day per each client) are permitted to visit the home occupation. Hours for visits shall be between 8:00am and 8:00pm, unless otherwise noted in 15-6-27.

(5) Home occupations for child care shall have a maximum of six children under care at any one time.

(6) No manufacturing or processing of any sort whatsoever shall be done, except as permitted by Section 15-6-27(D)(1). Public facilities and utilities shall be adequate to safely accommodate equipment used for the home occupation.

(7) No stock-in-trade shall be displayed or sold on the premises except for delivery of orders.

(8) No stock-in-trade, except articles produced by residents of the premises, shall be stored on the premises and those articles shall not be flammable, combustible or explosive materials.

(9) No alteration of the principal residential building shall be made which changes the character as a dwelling.

(10) Not more than 25% of the gross floor area of the principal dwelling or accessory structure shall be utilized for the home occupation.

(11) The home occupation shall not produce offensive noise, vibration, smoke, electrical interference, dust, odors or heat. Any noise, vibration, smoke, electrical interference, dust odors, or heat detectable beyond the property lines or beyond the walls of the dwelling unit, if the unit is part of a multi-family structure, shall constitute a violation of this section.

(12) No mechanical or electrical equipment other than normal domestic or household equipment shall be used.

(13) There shall be no outdoor storage of equipment or materials used in the home occupation.

(14) The receipt or delivery of merchandise, goods or supplies for use in a home occupation shall be limited to the United States mail, similar parcel delivery service, or

private vehicles with a gross vehicle weight rating of 10,000 pounds or less. Deliveries and pick-ups shall occur between the hours of 8:00am and 8:00pm.

(15) Not more than one vehicle shall be utilized for business purposes and all parking shall be provided only in the driveway or other parking area not within the public right-of-way.

(16) No truck or van with a payload rating of more than one ton shall be parked on the site or in front of the site on a regular basis.

(17) No customer waiting areas shall be provided.

(18) No vehicles shall be parked and no equipment or materials shall be stored for trash haulers, home builders, home repair contractors and similar occupations.

(19) Signage shall:

(a) be limited to one wall-mounted sign not exceeding four square feet in area is permitted.

(b) be mounted flush against the wall of the principal dwelling unit or accessory structure; and

(c) not be illuminated

(20) A business license shall be obtained, if required by other ordinances.

(F) *Prohibited home occupations.* Home occupations in residential zoning districts shall not include the following types of activities and uses:

(1) Body piercing and/or painting, tattoos, or any type of physical therapy or psychotherapy;

(2) Commercial food preparation;

(3) Contractors shops;

(4) Furniture refinishing;

(5) Gymnastic facilities;

(6) Massage services or massage therapy establishments;

(7) Machine shop/metal working;

(8) Medical/dental office;

(9) Medical procedures;

(10) Medical/cosmetic facilities for animals, including animal care and boarding facilities;

(11) Motor vehicle and engine repair;

(12) Outdoor recreational activities;

(13) Palm reading or fortune telling;

(14) Recording studios;

(15) Retail Sales;

(16) Tanning salons;

(17) Trash hauler operations other than a home office;

(18) Any other use not allowed in accordance with 15-6-27 Home Occupations of this chapter or any use determined by the Director of Planning and Development Services to be a detriment to the surrounding properties and/or area.

(G) *Unsafe Home Occupations.* If any home occupation has become dangerous or unsafe; presents a safety hazard to the public, pedestrians on public sidewalks, or motorists on the public right-of-way; or presents a safety hazard to adjacent or nearby properties, residents or businesses,

the Director of Planning and Development Services or his/her designee shall issue an order to the dwelling owner and/or tenant on the property on which the home occupation is being undertaken, directing that the home occupation immediately be made safe or be terminated. The property owner and/or tenant shall take the necessary corrective measures. In the event of a failure to do so by the owner and/or tenant, after notice and within seven (7) days of the receipt of said notice, the Director of Planning and Development Services or his/her designee may take any and all enforcement actions to render the home occupation and dwelling safe. Costs incurred by the City of Kingsville, if forced to take enforcement actions, shall be borne by the property owner and shall be treated as a zoning violation and penalized as set forth in Section 1-1-99 of this code of ordinances.

## **Staff Report to the PLANNING & ZONING COMMISSION and CITY COMMISSION**

by the Planning & Development Services Department, Planning Division  
City of Kingsville, Texas

**Request:**        **APPROVAL OF AN AMENDMENT TO CHANGE ARTICLE VI “ZONING” OF CHAPTER 15 “LAND USAGE”, SPECIFICALLY THE CREATION OF A NEW SECTION, 15-6-26 “ACCESSORY USES AND STRUCTURES”, DEALING WITH NEEDED CODE LANGUAGE PERTAINING TO ALLOWED SUBORDINATE ACCESSORY USES AND STRUCTURES WITHIN ALL ZONING DISTRICTS.**

Petitioner and Agent:        City of Kingsville  
Date of P&Z Hearing:        February 12, 2014

### **EXHIBITS PRESENTED**

- Chapter 15 of the Kingsville Code of Ordinances (present at the meeting)
- City of Kingsville Master Plan

### **BACKGROUND AND PERTINENT DATA**

As a part of the comprehensive review of the current zoning and subdivision regulations, wherein staff enlisted the assistance of a planning and zoning consultant, staff identified the need for regulations pertaining to accessory uses and structures which are subordinate to the principal use. This type of use was not addressed within the current zoning code and requested it to be researched and created for consideration. Currently, the zoning code defines an accessory use; however it doesn't provide guidance as to what types of uses are allowed which permit the full appropriate use of a property while also ensuring compatible accessory uses and/or structures that will not be detrimental to the neighboring properties or neighborhood. Staff has reported that over the past several years there have been residents inquiring and or performing accessory type uses on their property, which are not currently regulated, and it has created confusion and frustrations for residents and staff alike.

As previously mentioned, currently no code language exists that provides a listing of the many nationally and locally suitable accessory uses on properties within a municipality. The proposed code section, 15-6-26 “Accessory Uses and Structures” provides a clear purpose and listing of allowed and prohibited accessory uses and also provides guidance and definition as to the location, construction type and uses pertaining to accessory structures, such as a garage or storage shed. This new code language is specifically designed to create additional accessory uses which are allowed in conjunction and in addition to the base zoning district permitted uses. Currently, no language exists that provides this comprehensive approach, and staff has identified it as a vital part to ensuring a safe environment that also promotes a high quality of life and full appropriate use of property, while ensuring incompatible uses are not created.

The proposed new language is consistent with the principles and intent of the City of Kingsville Master Plan adopted in May of 2008. This new language will not only define specific allowed uses and forewarn individuals of prohibited uses within certain zoning districts; it will also ensure proper sustainable and safe construction of accessory structures such as garages, carports, gazebos and/or storage sheds. The new proposed code language is as shown in the attached document.

City staff, including the City Attorney, has performed a thorough review of the proposed creation of the new code section, Section 15-6-26 “Accessory Uses and Structures”. This section addresses the needed code language pertaining to the appropriate guidelines and provisions for allowed accessory use, while also delineating prohibited uses that would be incompatible, unsafe and/or a detriment to the neighboring properties. Additionally, the current zoning code defines accessory uses and structures but does not provide a listing of permitted/prohibited uses and makes no mention of permitted accessory structures other than required area requirements within the property. This code will provide the public and city staff with code language that will be an added resource. Its intent is to enhance the usability of property while appropriately ensuring uses and structures meet the permitted use requirements and ensure the safety and welfare of the community.

Staff recommends **Approval** of the code amendment request.

Reviewed by:

Robito G. Am. PE

Robert G. Isassi, P.E.  
Director of Planning & Development Services

## **Sec. 15-6-26. Accessory uses and structures.**

(A) *Purpose and findings.* This section establishes additional zoning district standards, exceptions to standards or alternative standards (e.g. screening, landscaping, and/or design standards) for particular uses which are subordinate to the principal use. The purpose of this section is to:

- Provide supplemental standards for individual uses in order to protect surrounding property values and uses;
- Protect the public health, safety and general welfare; and
- Implement the Master Plan of the City

The section provides supplemental regulations for certain uses, structures and facilities. These regulations are in addition to the other applicable standards of this Code. In some cases, the establishment of these standards streamlines the permitting process by permitting the use as of right in certain districts subject to these regulations rather than a case-by-case consideration for a Special Use Permit (SUP). In other instances, the regulations do not streamline the process but address the unique development challenges of certain uses and structures whether permitted as of right or as a special use.

(B) *Compliance Mandatory.* No accessory use may be initiated, established, or maintained unless it complies with the standards set forth for such use in this section and/or article.

(C) *Regulations Supplement Other Code Regulations.* The regulations of this section shall supplement the requirements of the applicable base and overlay zoning district regulations and other applicable standards of this section. These standards are in addition to, and do not replace, the other standards for development set forth in any other sections or articles of the code of ordinances unless otherwise provided. To the extent that there is a conflict between a standard in another section of the code of ordinances and a standard in this section, the standard in this section governs unless otherwise indicated.

(D) *Applicability.* This section applies to any subordinate use of the building or other structure, or use of land that is:

- (1) Conducted on the same lot as the principal use to which it is related; and
- (2) Clearly incidental to, and customarily and commonly associated with the main permitted use of the premises. Such accessory buildings and uses shall be so constructed, maintained and conducted as to not produce noise, vibration, concussion, dust, dirt, fly ash, odor, noxious gases, heat or glare which is injurious, damaging or unhealthful to adjacent property or the uses thereof and shall be on the premises of the main use.

Where a principal use or structure is permitted, such use shall include accessory uses and structures subject to this section.

(E) *Permit Required.* Every accessory building requires a building permit. Application for such a permit shall be made to the Building Official. The building permit for the accessory building may be included on the permit for the main building or main land use if constructed or established simultaneously, otherwise a separate permit will be required.

(F) The Director of Planning & Development Services, or his/her designee, shall determine whether a proposed accessory use/structure, or in the case of an enforcement action, an existing accessory use/structure is permitted under this ordinance. In reviewing and approving an accessory use/structure, the Director of Planning & Development Services, or his/her designee, shall find that the proposed use meets the following criteria:

- (1) Is not to be constructed or established on a lot until construction of the principal structure is completed or the principal use is established;
- (2) Is not to be established on a vacant lot and/or is located on the same lot as the principal use served;
- (3) Is subordinate to and serves a principal use;
- (4) Is subordinate in area, extent or purpose to the principal use served;
- (5) Contributes to the comfort, convenience or necessity of the occupants, business or industry of the principal use;
- (6) Is not injurious, noxious or offensive to the neighborhood;
- (7) Accessory uses of a storage nature are not located in the front yard area; and
- (8) Accessory buildings shall not be used for dwelling purposes except where permitted in the Land Use Chart (Appendix A, Section 1 Land Use Chart or Article 6 of Chapter 15 of the Code of Ordinances)

In the event the Building Official denies the accessory building, or the Director of Planning and Development Services denies the accessory use, the applicant may appeal to the Board of Adjustment as provided in Section 15-6-157, or seek a variance as allowed in Subsection 15-6-26(J). Any accessory use to a use requiring a special use permit is prohibited unless specifically allowed by the special use permit.

(G) *General Requirements.* Unless otherwise specified in this section, all attached and detached accessory structures shall conform to the same use, height and area regulations required of the main use or structure and with the following additional limitations:

- (1) Accessory uses shall not include the conduct of trade unless permitted in conjunction with a permitted use.
- (2) Accessory uses shall be located on the same lot as the principal use for which they serve.

(H) *Dimensional and Density Standards.* The location of accessory uses and structures is subject to Appendix B "Space Requirements" Section 1 & 2 of Article 6, Chapter 15 of the Code of Ordinances.

- (1) For residential lots not exceeding 3 acres, detached accessory structures shall not be located in the front yard. Detached accessory structures may be located in the rear yard area.
- (2) For residential lots exceeding 3 acres, detached accessory structures may be located in the front yard if it is required due to topographical issues or other impediment that prevents the placement of the structure in the rear yard area.



(3) Accessory uses and structures shall not exceed 60 percent of the gross floor area (GFA) of the principal use.

(4) Within nonresidential districts, accessory structures, except for carports, are prohibited within the side and rear yards of lots adjacent to a residential use or district. The total floor area of all accessory structures shall not exceed 2500 square feet.

(I) *Permitted Accessory Uses and Structures.* Accessory uses and structures include, but are not limited to, the following list of examples, provided that each accessory use or building shall comply with all the provisions of this chapter.

(1) Drop-off boxes, such as mail or donation boxes, at all commercial establishments in C1 through I2 zone districts provided the drop-off box:

- a. Is located behind the minimum setbacks required in the respective zones;
- b. Is located so it is not (1) blocking driveways, (2) blocking pass-through traffic in parking aisles, (3) blocking pedestrian traffic, (4) creating any safety issue as determined by the Director of Planning and Development Services; and
- c. Does not eliminate any required parking spaces or is not located in any parking aisle.

(2) Employee restaurants and cafeterias when located in a permitted business or manufacturing building. (The size of these accessory uses may be no more than 10% of the gross square footage of the business.)

(3) Home occupations in accordance with Section 15-6-27.

(4) Management offices for multi-tenant properties.

(5) The operation of service facilities and equipment in connection with schools, hospitals and other similar institutions or uses.

(6) The overnight parking of a licensed truck in working condition of one ton rating or less in a residential zone district.

(7) Recreational uses and structures for the use and convenience of occupants, employees or guests of a principal use or facility.

(8) Refreshment and service facilities in parks and playgrounds, and in permitted public or private recreation facilities or schools.

(9) Repair or construction of power boats, large sailing vessels or racing vehicles may be allowed only in zone districts for which repair or construction of vehicles as a commercial business is permitted. Minor engine tune-ups of personal vehicles or recreational vehicles which are legally stored on a lot may be permitted in residential districts provided the vehicles are owned by the occupants of the dwelling and all repair must take place within a private garage.

(10) *Residential accessory buildings.* Garages, carports, parking facilities, tool/storage sheds in residential zoning districts and for residential uses in all other zoning districts, provided:

a. *Attached accessory structures.* Garages, carports, parking facilities or tool/storage sheds attached to the main structure shall conform to the same height, area and setback regulations required for the main use or structure, except:

1. The structure shall not occupy more than 50% of the required rear yard.

b. *Detached accessory structures.* Garages, carports, gazebos, parking facilities or tool/storage sheds detached from the main structure shall:

1. Be in accordance with Appendix B, Section 1 "Space Requirements" Article 6 of Chapter 15 of the Code of Ordinances;
  2. Occupy an area no greater than 50% of the rear yard area behind the principal structure; and
  3. Be at least seven feet from the main dwelling.
- c. Detached accessory structures located in any residential zoning district shall meet the following standards as approved by city staff:
1. Galvanized (painted and unpainted) metal is prohibited as an exterior building material;
  2. All accessory structures shall have enclosed eaves at a minimum length or depth of twelve inches unless it is a pre-manufactured and/or a preassembled wood storage building and under 250 square feet in gross floor area.
  3. Freestanding metal carports and arched steel structures (aka Quonset huts) are prohibited.
  4. All accessory structures shall have a maximum eave height of twelve feet, and minimum roof slope of a 3:12 ratio.
  5. Structures larger than 400 square feet in ground floor area shall meet the following additional requirements:
    - i. Exterior materials shall consist of the same or similar materials as the principal structure.
    - ii. In order to prevent an institutional or uncharacteristic appearance, any wall or fascia with a square footage greater than 400 sq. ft. shall have at least one window with a minimum measurement of two foot six inches by three feet six inches or a typical thirty six inch wide walk-in door.
  6. No exterior stairways to a second floor or attic is permitted at the front or side of the building

The requirements of this subsection shall not apply to agricultural operations in residential zoning districts.

(11) Solar Energy Systems in accordance with 15-6-174 through 15-6-187.

(12) Storage of one boat, travel trailer, RV or pick-up camper in residential districts, but not in the front yard or the street side yard of a corner lot, and provided they are not used as living quarters.

(13) Telecommunications equipment buildings as provided for in, Section 15-6-47(D) of this article and chapter.

(14) Temporary construction trailers used for offices and/or storage, located on a lot for which building permits have been issued, provided the trailer meets the setbacks for an accessory structure and is limited to the duration of construction, not to exceed one year.

(15) Temporary real estate sales offices, located on a subdivision or property being sold, and limited to the period of sale, but not exceeding two years without a special use permit.

(16) The storage of building materials including, but not limited to, bricks, blocks, cement, concrete, electrical materials, glass, linoleum, lumber, plumbing materials, rocks

and tile provided that these materials are to be used for construction on the premises and, if stored for more than 24 consecutive hours in a 30 day period, that they are screened from view of neighboring properties and adjacent streets and alleys, and provided that the storage use is in accordance with the provisions of Subsection (F). In no case shall building materials be stored outside of a building on residentially zoned property for a period of time exceeding 90 days.

(17) Public and private utility lines and structures, including, but not limited to, sanitary sewers, storm sewers, water, natural gas, electric, cable television and telephone.

(18) Wind Energy Conversion Systems (Exempt and Small Wind Energy Facilities) in accordance with Section 15-6-186 through 15-6-194.

(J) *Variances*: A variance may be granted by the Board of Adjustment in accordance with the procedures contained in Section 15-6-157 for the following accessory uses:

(1) The parking of a truck or moving van of one ton rating or more for more than one night.

(2) The repair or construction of power boats, racing vehicles or other recreational type vehicle in residential districts.

(3) The storage of one boat, travel trailer, RV or pick-up camper in the front yard of any residential district.

(K) *Prohibited Accessory Uses*. None of the following shall be permitted as an accessory use:

(1) Equipment, material or vehicles, other than a registered motor vehicle in operable condition, boat, travel trailer, recreational vehicle or pick-up camper as permitted above, for more than 24 hours in a 30 day period in a residential district.

(2) The overnight parking of a truck with greater than one ton rating or service/delivery van.

(3) Storage of any materials not directly related to the principal use of the property and located outside of a building in a residentially zoned district is specifically prohibited except for building materials as provided in Subsection 15-6-26(I)(16) and materials customarily associated with a residential use such as, but not limited to, above ground swimming pools and associated equipment buildings, arbors, barbecue pits and grills, firewood neatly stacked, gazebos, operational and licensed vehicles, planters, play structures, toys, trash cans used for normal on-site garbage collection and trellises attached to a building.

## **Staff Report to the PLANNING & ZONING COMMISSION and CITY COMMISSION**

by the Planning & Development Services Department, Planning Division  
City of Kingsville, Texas

**Request: APPROVAL OF AN AMENDMENT TO CHANGE ARTICLE III “SUBDIVISIONS” OF CHAPTER 15 “REQUIRED IMPROVEMENTS”, SPECIFICALLY ADDING A NEW SECTION 15-3-57 “STREET TREES” REGARDING NEEDED LANGUAGE PERTAINING TO PROPER SUBDIVISION DESIGN AND CONSTRUCTION.**

Petitioner and Agent: City of Kingsville  
Date of P&Z Hearing: February 12, 2014

### **EXHIBITS PRESENTED**

- Chapter 15 of the Kingsville Code of Ordinances (present at the meeting)
- City of Kingsville Comprehensive Housing Plan

### **BACKGROUND AND PERTINENT DATA**

With the recent creation and adoption of the Comprehensive Housing Plan and in conjunction with the adopted Master Plan, several needed code amendments have been performed within Chapter 15, Article III “Subdivisions” to add specific design criteria and required improvements to enhance the development of the City, while ensuring a higher quality of life for its residents.

The proposed amendment to the “Required Improvements” is in relation to the previous amendments that were adopted in 2013 and are consistent with what was approved in the Comprehensive Housing Plan, as specifically identified within Part III and Part VI, and prescribed as action item #2 within the Plan Implementation Program. This particular amendment will further provide codified language that will support and carry out the street tree design standards set forth in Section 15-3-30 and ensure the installation of this important development feature. Additionally, the proposed code language establishes the warranty period for the infrastructure and the eventual acceptance of the trees by the City. Once accepted by the City, full responsibility and maintenance is assumed from the developer. The specific language is as follows:

#### **Sec. 15-3-57. Street trees.**

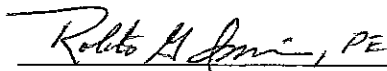
Street trees shall be installed in all new subdivisions or replats in accordance with the design standards set forth in Section 15-3-30(N) of Chapter 15 (Land Usage). Street trees shall be dedicated to the City as part of the street improvements and shall be installed, maintained and warrantied by the developer. Dead and dying street trees shall be replaced by the applicant/developer during the first two years after installation. Once the two year warranty period has expired the City will then assume the full responsibility of maintaining the street trees.

**STAFF REVIEW & RECOMMENDATION**

The purpose of these proposed amendments is to amend the "Required Improvements" section by adding a new section, Section 15-3-57 "Street Trees". This amendment will add codified language pertaining to the specific design criteria for street trees to ensure quality development within the City. The language is designed to carry out the adopted plans of the City and to also ensure a higher quality of development wherein neighborhoods are constructed that encourage long term residency and promote a high quality of life.

Staff recommends **Approval** of the amendment requests.

Reviewed by:



Robert G. Isassi, P.E.

Director of Planning & Development Services

**Sec. 15-3-57. Street trees.**

Street trees shall be installed in all new subdivisions or replats in accordance with the design standards set forth in Section 15-3-30(N) of Chapter 15 (Land Usage). Street trees shall be dedicated to the City as part of the street improvements and shall be installed, maintained and warrantied by the developer. Dead and dying street trees shall be replaced by the applicant/developer during the first two years after installation. Once the two year warranty period has expired the City will then assume the full responsibility of maintaining the street trees.

## **Staff Report to the PLANNING & ZONING COMMISSION and CITY COMMISSION**

by the Planning & Development Services Department, Planning Division  
City of Kingsville, Texas

**Request:**        **APPROVAL OF AN AMENDMENT TO CHANGE ARTICLE VI "ZONING" OF CHAPTER 15 "LAND USAGE", SPECIFICALLY THE AMENDMENT OF A "AREA REGULATIONS" SECTION, 15-6-92 "REAR YARDS", PROVIDING CLARIFICATION AND OMITTING THE LANGUAGE PERTAINING TO AN ABUTTING ALLEY.**

Petitioner and Agent:        City of Kingsville  
Date of P&Z Hearing:        February 12, 2014

### **EXHIBITS PRESENTED**

- Chapter 15 of the Kingsville Code of Ordinances (present at the meeting)

### **BACKGROUND AND PERTINENT DATA**

In conjunction with the comprehensive review of the zoning and subdivision code, staff discovered an oddity in Section 15-6-92 "Rear Yards". The code arbitrarily allowed an accessory structure to be placed in the rear yard as long as it "does not abut an alley." Staff conferred with the consultant for additional review and input, and no valid conclusion could be made as to why the code was written as such. It was determined that the code provision should be modified by simply omitting the portion that required that an accessory structure be located in the rear yard only if it did not abut an alley. This consensus was developed based on the reasoning that an accessory structure that has an alley access would likely prefer to locate the structure in the rear yard closest to the alley, rather than a front access off the street. The following language is proposed to allow an accessory structure to be placed in the rear yard with or without alley access:

*Section 15-6-92 (4):*

(4) Accessory buildings may be located in the required rear yard provided the building is at least five feet from the rear lot line.

### **STAFF REVIEW & RECOMMENDATION**

City staff, including the City Attorney, has performed a thorough review of the proposed amendment to Section 15-6-92 "Rear Yards". The language now reflects the desired rear yard usage pertaining to accessory structures and allows an accessory structure to be placed in the rear yard, regardless of the presence of an abutting alley.

Staff recommends **Approval** of the code amendment request.

Reviewed by: Robert G. Isassi, P.E.  
Robert G. Isassi, P.E.  
Director of Planning & Development Services

**Sec. 15-6-92. Rear yards.**

(A) No building or structure shall hereafter be located, erected, or altered to have a rear yard smaller than prescribed on the Space Requirement Chart (Appendix B), except that where a lawfully existing building at the effective date of this article may have smaller rear yard than herein required, such building shall have the status of a lawful nonconforming structure, and no rear yard existing shall be reduced below the minimum set forth.

(B) Special rear yard regulations.

(1) No rear yard is required for nonresidential uses upon lots which have rear lot lines adjacent to an alley of at least 20 feet in width.

(2) Nonresidential uses which have a rear lot line adjacent or contiguous to another nonresidential use require no minimum rear yard provided the rear wall satisfies four hour fire wall standards.

(3) Nonresidential uses abutting or adjacent to a residential district shall maintain a minimum rear yard of 10 feet.

**(4) Accessory buildings may be located in the required rear yard provided the building is at least five feet from the rear lot line.**

(5) The ordinary projections of window sills, belt courses, cornices, chimneys, and roof overhangs may extend three feet into the required rear yard.

*(1962 Code, § 11-3-8)*

***Cross reference— Penalty, see § 15-6-999.***



## **Staff Report to the PLANNING & ZONING COMMISSION and CITY COMMISSION**

by the Planning & Development Services Department, Planning Division  
City of Kingsville, Texas

**Request:**      **APPROVAL OF AN AMENDMENT TO CHANGE ARTICLE VII “NUISANCES” OF CHAPTER 9 “GENERAL REGULATIONS”, SPECIFICALLY AMENDMENTS TO SECTION, 9-7-1 “ADOPTION BY REFERENCE: INTERNATIONAL PROPERTY MAINTENANCE CODE”, 9-7-2 “ADDITIONS AND AMENDMENTS TO THE INTERNATIONAL PROPERTY MAINTENANCE CODE”, 9-7-3 “ACTS PROHIBITED”, 9-7-4 “DEFINITIONS”; DEALING WITH NEEDED CODE LANGUAGE PERTAINING TO PROPERTY MAINTENANCE AND NUISANCES WITHIN ALL ZONING DISTRICTS.**

Petitioner and Agent:      City of Kingsville  
Date of P&Z Hearing:      February 12, 2014

### **EXHIBITS PRESENTED**

- Chapter 15 of the Kingsville Code of Ordinances (present at the meeting)
- City of Kingsville Master Plan

### **BACKGROUND AND PERTINENT DATA**

Over the past several years, the City of Kingsville has continued to pursue innovative and effective ways to address community appearance and property maintenance needs through fair and consistent enforcement. Throughout this time, the existing nuisance codes were used as a tool to educate and carry out this mission. As the environment continues to evolve, the codes are required to evolve as well. Staff, with the assistance of an independent consultant, identified the necessity to adopt the International Property Maintenance Code (IPMC) which is created by the International Code Council (ICC).

The IPMC is designed to work in cooperation with the series of ICC codes that are currently adopted and in use within the Building Regulations Division. City staff determined this is the most effective way to update the current nuisance codes, while affording the quick adoption of the new IPMC editions as they are issued by the ICC. This also continues and enhances the mission of fair and consistent property maintenance activities, as the IPMC is a nationally recognized and widely used tool for most municipalities. Below are brief summaries of the amendments and additions, which are fully described in the attached:

- Section 9-7-1 “Adoption by Reference: International Property Maintenance Code,” establishes the full adoption of the IPMC as part of Article VII “Nuisances,” and establishes the intent and enforceability provisions.
- Section 9-7-2 “Additions and Amendments to the International Property Maintenance Code,” allows the IPMC code to be amended to coincide with the existing nuisance codes. This section tailors the IPMC to fit the needs of the City of Kingsville, and substitutes, amends or omits certain language to prevent contradictions and/or confusion specifically within established enforcement and notice provisions already provided in Article VII.

- Section 9-7-3 "Acts Prohibited," was amended to add the following for further inclusion:
  - "It shall be unlawful for any person to contract, cause to be constructed, or permit to remain constructed any building which violates any provisions of such Code."
- Section 9-7-4 "Definitions," was amended to further define and create consistency with the IPMC on the maximum height of weeds/vegetation, which limits it to 12 inches.

As previously mentioned, this code will create a uniform property maintenance code that will reduce confusion, further define code enforcement procedures and assist in the education and enforcement of the Community Appearance Division.

**STAFF REVIEW & RECOMMENDATION**

City staff, including the City Attorney, has performed a thorough review of the proposed code amendments within Article VII of Chapter 9. This section addresses the identified code language and adoption of the IPMC to further the community appearance, and more importantly the health and safety efforts, as established by the City Commission; and established within the City of Kingsville Master Plan. The adoption of the IPMC and the associated amendments will enhance the existing nuisance codes and expand the City's resources toward protecting the health, safety and welfare of the community.

Staff recommends **Approval** of the IPMC code adoption and the associate code amendments as request.

Reviewed by:



Robert G. Isassi, P.E.  
Director of Planning & Development Services

## **Article 7: Nuisances**

### **Sec. 9-7-1.: Adoption By Reference: International Property Maintenance Code**

**(A)** A certain document being marked and designated as the International Property Maintenance Code (IPMC), 2009 Edition, including all future amendments of or revisions to such code, as published by the International Code Council (ICC), be and is hereby adopted as the Property Maintenance Code of the City of Kingsville in the State of Texas for regulating and governing the conditions and maintenance of all property, buildings and structures;

- by providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary, and fit for occupation and use; and
- the condemnation of buildings and structures unfit for human occupancy and use and the demolition of such existing structures as herein provided; and
- providing for the issuance of permits and collection of fees ; and
- each and all of the regulations, provisions, penalties, conditions and terms of said Property Maintenance Code on file in the offices of the Community Appearance Division and the Building Services Division of the City of Kingsville are hereby referred to, adopted, and made a part hereof, as if fully set out in this Section, with the additions, insertions, deletions and changes, if any, which shall be documented in this article.

**(B)** Two (2) copies of the adopted IPMC code in this Section shall be available for viewing. One of which will be located in the office of the Community Appearance Division and one within the office of the Building Services Division.

**(D)** This Section shall not be interpreted to relieve from responsibility or to lessen the responsibility of any person owning, controlling, or occupying any structure. Nor shall the City be held as assuming liability or duty of any nature by reason of inspection authority issued by the City to City Code Enforcement Officers or Building Officials or Inspectors for maintenance of the property.

**(E) *Enforcement.*** The Code hereby adopted shall be enforced by the Community Appearance Supervisor or the Building Official, who may delegate such enforcement authority to such assistants and subordinates as the needs of the City may require.

### **Sec. 9-7-2. Additions and amendments to International Property Maintenance Code.**

The *International Property Maintenance Code* is hereby modified and changed in the following particulars:

- (A)**Section 101.1 of the *International Property Maintenance Code* shall be amended to read as follows:

**§ 101.1 Title.** These regulations shall be known as the **International Property Maintenance Code of the City of Kingsville**, hereinafter referred to as “this code.”

**(B) Section 103.5 entitled “Fees” of the *International Property Maintenance Code* shall be amended to read as follows:**

**§103.5 Fees.** The fees for activities and services performed by the department in carrying out its responsibilities under this code shall be as directed in Sections 9-7-5 and 9-7-6 of this Article.

**(C) Section 106 entitled “Violations.”** This section of the *International Property Maintenance Code* is hereby substituted to read the same as § 9-7-5 of this Article and shall read the same in all other references to Section 106 Violations in the *International Property Maintenance Code*, 2009 Edition.

**(D) Section 107 entitled “Notices and Orders.”** This section of the *International Property Maintenance Code* is hereby substituted to read the same as § 9-7-5 of this Article and shall read the same in all other references to Section 107 “Notices and Orders” in the *International Property Maintenance Code*, 2009 Edition, unless otherwise noted in this subsection.

**(E) Section 108.3 entitled “Notice” of the *International Property Maintenance Code* shall be amended to read as follows:**

**108.3 Notice.** Whenever the code official has condemned a structure or equipment under the provisions of this section and/or § 15-1-165 through § 15-1-167, notice shall be posted in a conspicuous place in or about the structure affected by such notice and served on the owner or person or persons responsible for the structure or equipment in accordance with § 15-1-167(B) and § 15-1-168. If the notice pertains to equipment it shall also be placed on the condemned equipment. The notice shall be in the form prescribed in § 15-1-167(B).

**(F) Section 110 entitled “Demolition.”** This section of the *International Property Maintenance Code* is hereby substituted to read the same as § 15-1-167 through § 15-1-176 of Chapter 15 “Land Usage”, Article 1 “Building Regulations” and shall read the same in all other references to Section 110 “Demolition” in the *International Property Maintenance Code*, 2009 Edition.

**(G) Section 111 entitled “Means of Appeal.”** This section of the *International Property Maintenance Code*, is hereby amended to read "Board of Adjustment" and shall read the same in all other references to such Board in the *International Property Maintenance Code*, 2009 Edition. The Board shall be the Board of Adjustment as set forth by § 15-6-157 of this chapter. The Board of Adjustment shall have the number of members and be appointed for the terms specified by § 15-6-157 of this chapter. All subsections of § 111 of the

*International Property Maintenance Code* which conflict with § 15-6-157 of this chapter shall be governed by § 15-6-157.

(H) Section 302.4 entitled “Weeds” of the *International Property Maintenance Code* shall be amended to read as follows:

**302.4 Weeds.** All premises and exterior property shall be maintained free from weeds or plant growth in excess of 12 inches. All noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs provided however, this term shall not include cultivated flowers and gardens.

Upon failure of the owner or agent having charge of a property to cut and destroy weeds after service of a notice of violation, they shall be subject to corrective action in accordance with § 9-7-5 and/or the prosecution in accordance with § 9-7-99 of this Article.

(I) Section 304.14 entitled “Insect Screens” of the *International Property Maintenance Code* shall be amended to read as follows:

**304.14 Insect Screens.** During the period from January 1 to December 31, every door, window and other outside opening required for ventilation of habitable rooms, food preparation areas, food service areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged or stored shall be supplied with approved tightly fitting screens of not less than 16 mesh per inch (16 mesh per 25mm), and every screen door used for insect control shall have a self-closing device in good working condition.

Exception: Screens shall not be required where other approved means, such as air curtains or insect repellent fans, are employed.

(J) Section 602.3 entitled “Heat Supply” of the *International Property Maintenance Code* shall be amended to read as follows:

**602.3 Heat Supply.** Every owner and operator of any building who rents, leases or lets one or more dwelling units or sleeping units on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply heat during the period from November 1 to March 1 to maintain a temperature of not less than 68 degrees Fahrenheit (20 degrees Celsius) in all habitable rooms, bathrooms and toilet rooms.

Exceptions:

1. When the outdoor temperature is below the winter outdoor design temperature for the locality, maintenance of the minimum room temperature shall not be required provided that the heating system is operating at its full capacity. The winter outdoor design temperature for the locality shall be

as indicated in Appendix D of the *International Plumbing Code*.

2. In areas where the average monthly temperature is above 30 degrees Fahrenheit (-1 degree Celsius) a minimum temperature of 65 degrees Fahrenheit (18 degrees Celsius) shall be maintained.

(K) Section 602.4 entitled "Heat Supply" of the *International Property Maintenance Code* shall be amended to read as follows:

**602.4 Occupiable work spaces.** Indoor occupiable work spaces shall be supplied with heat during the period from November 1 to March 1 to maintain a temperature of not less than 65 degrees Fahrenheit (18 degrees Celsius) during the period the spaces are occupied.

**Exceptions:**

1. Processing, storage and operation areas that require cooling or special temperature conditions.
2. Areas in which persons are primarily engaged in vigorous physical activities.

#### **Sec. 9-7-3. Acts prohibited.**

- (A) It shall be unlawful for any person to contract, cause to be constructed, or permit to remain constructed any building which violates any provisions of such Code.
- (B) It shall be unlawful for any person to intentionally, knowingly, recklessly, or acting with criminal negligence, deposit noxious matter on the property of another.
- (C) It shall be unlawful for any person, after receiving notice in accordance herewith to intentionally, knowingly, recklessly, or acting with criminal negligence, to permit noxious matter to remain on premises under his or her care, control or custody.
- (D) It shall be an affirmative defense to the unlawful acts described herein that the person was permitted or required by law to deposit or permit to remain such noxious matter. The affirmative defense is valid only if the aforementioned permission or requirement is in strict accordance with law, including, without limitation, the manner of depositing or allowing to remain.
- (E) It is a defense to prosecution under this section that the vegetation is:
  - (1) Located on heavily wooded real property or portion thereof that reasonably prevents the operation of mowing machines;
  - (2) An agricultural crop, cultivated shrub, flowers or other decorative ornamental plant under cultivation; or
  - (3) Wildflowers, but only until the time as seeds have matured followed the final blooming of the majority of the plants.

A person who meets the requirements of an affirmative defense as set out in this subsection is still required to maintain a 50-foot mowed buffer between his and another property.

(Ord. 97019, passed 6-23-97; Ord. 2001-07, passed 2-26-01; Ord. 2005-11, passed 3-14-05)

*Cross reference—Penalty, see § 9-7-99.*

#### **Sec. 9-7-4. Definitions.**

As used in this article the following terms shall have the following meanings, to wit:

*Abate.* To eliminate by removal, repair, rehabilitation, or demolition.

*Deposit.* Any divestiture of possession whether such divestiture of possession is actual or constructive.

*Notice* shall mean:

- (1) Personal notice to the owner in writing; or
- (2) By letter addressed to the owner at the owner's address as recorded in the appraisal district records of the appraisal district in which the property is located; or
- (3) If personal service cannot be obtained or the owner's address is unknown, then, notice shall be:
  - (a) By publication at least once; or
  - (b) By posting the notice on or near the front door of each building on the property to which the violation relates; or
  - (c) By posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.
- (4) If a notice to a property owner is returned by the United States Postal Service as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered as delivered.

*Noxious matter.* Any matter which is or is not subject to the process of oxidation and shall include, without limitation, filth; carrion; impure or unwholesome substances; weeds, grass, or similar vegetation in excess of 18 inches; refuse; rubbish; brush; and any other substance which would be objectionable, unsightly, or unsanitary to a reasonable person.

*Permit to remain.* Failure to remove on a permanent basis within the time required by law as specified by any notice to abate noxious matter that is provided for herein.

*Premises.* All privately owned property, including vacant land or a building designed or used for residential, commercial, business, industrial, or religious purposes. The term includes a yard, ground, walk, driveway, fence, porch, steps, other structure appurtenant to the property, or easily accessible easements, alleys, and rights of way.

*Premises of another.* Property over which a person has no right of care, control, or custody. Property under the care, control, or custody of the State of Texas or any of its political subdivisions shall always constitute "premises of another."

*Refuse.* Garbage, rubbish, paper, and other decayable and non-decayable waste, including vegetable matter and animal and fish carcasses.

*Rubbish.* Non-decayable waste from a public or private establishment or residence.

*Weeds.* All rank and uncultivated vegetable growth or matter that:

- (1) **Has grown to more than 12 inches in height; or**
- (2) May create an unsanitary condition or become a harborage for rodents, vermin, or other disease-carrying pests, regardless of the height of the weeds.

*(Ord. 97019, passed 6-23-97; Ord. 2001-07, passed 2-26-01; Ord. 2005-11, passed 3-14-05; Ord. 2007-31, passed 12-10-07)*

#### **Sec. 9-7-5. Correction by city; lien.**

(A) That the provisions of this section shall be cumulative of any criminal penalties or civil remedies provided for herein.

(B) Upon a determination that noxious matter exists upon a premises, the owner of the premises shall be given notice to abate such noxious matter within seven days after the receipt of such notice. Should the owner of the premises fail to comply with such notice of abatement within seven days, the city may:

- (1) Do the work or make the improvements required; and
- (2) Pay for the work done or improvements made and charge the expenses to the owner of the property.

(C) The city in the notice of violation may inform the owner:

- (1) By **regular** mail and a posting on the property; or
- (2) By personally delivering the notice

that if the owner commits another violation of the same kind or nature that poses a danger to the public health and safety on or before the first anniversary of the date of the notice, the city without further notice may correct the violation at the owners expense and assess the expense against the premises.



(D) After the work has been completed and paid for by the city, a statement of expenses incurred by the city to abate such conditions and administrative fees as prescribed by separate ordinance shall be mailed to the owner of the property. The owner of the property shall pay for work and administrative fees within 30 days of the date of mailing thereof.

(E) In the event that the amount shown on the said statement for the work and administrative fees has not been paid within 30 days of mailing, the city shall assess expenses incurred under this section as follows:

(1) The Mayor or City Manager shall file a statement of such expenses and administrative fees incurred, giving the amount of such expenses, date on which the work was done or improvements made, state the name of the owner (if known) and the legal description of the property. The statement shall be filed with the County Clerk, and the city shall have a privileged lien on such lot or real estate upon which the work was done or improvements made to secure the expenditures so made, in accordance with the provisions of Tex. Health & Safety Code § 342.006 et seq. This lien shall be second only to tax liens and liens for street improvements; and the amount shall bear 10% interest per annum on the amount due from the date of payment by the city.

(2) It is further provided that for any such expenditures and interest, suit may be instituted and recovery and foreclosure of the lien may be had in the name of the city, and the statement of expenses and administrative fees so made, or a certified copy thereof, shall be prima facie proof of the amount expended for such work or improvements.

(F) The remedy provided by the assessment and foreclosure of lien is in addition to any criminal penalties or other civil remedies provided for herein.

(G) The city may foreclose a lien on property established herein in a proceeding relating to the property brought under Subchapter E, Chapter 33, Tax Code, as amended or hereinafter amended.

*(Ord. 97019, passed 6-23-97; Ord. 2001-07, passed 2-26-01; Ord. 2005-11, passed 3-14-05; Ord. 2007-08, § I, passed 4-23-07; Ord. 2007-31, passed 12-10-07)*

#### **Sec. 9-7-6. Abatement of nuisance lots; administrative fees**

For each abatement of nuisance lots that are in violation of § 9-7-1 and/or § 9-7-3 of this code, the fee for abatement of administration is \$150.00. ~~An additional abatement administrative fee of \$300.00 shall be charged for the abatement of nuisance lots whose abatement costs are not paid within the 60 days after the city sends the initial notice of the abatement charges to the purported owner.~~ *(Ord. 2007-08, § I, passed 4-23-07)*

**Sec. 9-7-7. Conflicting ordinances; more restrictive to prevail.**

Should this Article conflict with any other ordinance of the city relating to nuisances and/or property maintenance, the more restrictive shall prevail.

**Secs. 9-7-8—9-7-98. Reserved.**

**Sec. 9-7-99. Criminal penalties; civil remedies.**

(A) Unless otherwise provided for herein, punishment for any violation of this article shall be as follows, to wit: a fine of not less than \$150.00 nor more than \$2,000.00.

(B) If noxious matter is deposited on the property of another, upon conviction, punishment shall be assessed at a fine of not less than \$500.00 nor more than \$2,000.00.

(C) If noxious matter is deposited on the property of the State of Texas, or any political subdivision thereof, upon conviction, punishment shall be assessed at a fine of not less than \$500.00 nor more than \$2,000.00.

(D) If noxious material is deposited in any storm sewer system or sanitary sewer system of the city, upon conviction, punishment shall be assessed at a fine of not less than \$1,800.00 nor more than \$2,000.00.

(E) Each day or each occurrence, whichever more often occurs, shall constitute a separate offense.

(F) The recidivist provisions of the laws of the State of Texas shall be fully applicable and, if no such provisions are applicable, on the second and all subsequent offenses the minimum and maximum fine shall be twice that hereinbefore set out, provided that, in those cases herein where specific punishments for subsequent convictions are provided these specific punishments shall prevail over this division.

(G) In those instances in which noxious matter is deposited into the storm sewer system or sanitary sewer system of the city, the City Attorney may apply to a court of competent jurisdiction to request the court to order any corporeal personal property used in such deposit to escheat to the City of Kingsville or, in the alternative, that it be destroyed as contraband or a criminal instrument.

(H) Any signs or similar non-transitory structures deposited on any public street, highway, or right-of-way are declared purprestures. They shall be summarily abated and all costs for such abatement shall be collected from the owner or special owner thereof. This remedy shall be cumulative of any criminal provisions provided for herein.

*(Ord. 97019, passed 6-23-97; Ord. 98026, passed 11-23-98; Ord. 2001-07, passed 2-26-01; Ord. 2005-11, passed 3-14-05)*