

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING CHAPTER 130, “ZONING”, OF THE CITY OF BRYAN, CODE OF ORDINANCES, BY AMENDING ARTICLE 1, “GENERAL”, SECTION 130-3 “DEFINITIONS”, REMOVING UNNECESSARY DEFINITIONS, REVISING DEFINITIONS OF “HOME OCCUPATION,” “MULTIFAMILY (RESIDENTIAL) DEVELOPMENT OR DWELLING,” “OCCUPANCY” AND “SINGLE-FAMILY DWELLING UNIT” AND TO ADD DEFINITIONS OF “DETACHED DWELLING UNIT WITH NO MORE THAN TWO UNRELATED PERSONS,” “DETACHED DWELLING UNITS WITH NO MORE THAN FOUR UNRELATED PERSONS,” “GUEST,” “MULTI-FAMILY DWELLING UNIT,” “OCCUPANT,” “RELATED PERSONS,” “SECOND FAMILY,” “SINGLE-FAMILY DETACHED DWELLING UNIT,” “SINGLE-FAMILY ATTACHED DWELLING UNIT,” “TENANT” AND “UNRELATED PERSONS” AND BY AMENDING ARTICLE 2, “ZONING DISTRICTS”, SECTION 130-31 TO MAKE A GRAMMATICAL CORRECTION AND TO CLARIFY THE PERMITTING OF A SECOND FAMILY ON A TEMPORARY BASIS AND BY AMENDING ARTICLE 3 “OTHER REGULATIONS,” SECTION 130-34, BY ADDING SUBSECTION (P) TO ESTABLISH PRIMA FACIE PROOF OF OCCUPANCY AND TO AMEND CHAPTER 62, “LAND AND SITE DEVELOPMENT,” SECTION 62-1 “GENERAL DEFINITIONS” TO REVISE THE DEFINITION OF “MULTIFAMILY (RESIDENTIAL) DEVELOPMENT OR DWELLING”; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, from time to time it is necessary to update certain definitions to be consistent with state and federal law and to reflect current interpretations and applications and to have consistent terminology among various Code sections; and

**WHEREAS**, it is necessary to clarify certain existing residential zoning definitions to ensure that they are being applied as intended; and

**WHEREAS**, new definitions should be created to codify the relationship of residents within a single-family detached dwelling unit and clarify when occupancy is short term;

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

SECTION 1.

That Chapter 130, Zoning, Article I, “In General”, Section 130-3 “Definitions” is amended by deleting the definition of “Family” and revising the definitions of “Home Occupation,” “Multifamily (Residential) Development or Dwelling,” “Occupancy” and “Single-Family Dwelling Unit” and to add definitions of “Detached Dwelling Unit With No More Than Two Unrelated Persons,” “Detached Dwelling Units With No More Than Four Unrelated Persons,” “Guest,” “Multi-Family Dwelling Unit,” “Occupant,” “Related Persons,” “Second Family,” “Single-Family Detached Dwelling Unit,” “Single-Family Attached Dwelling Units,” “Tenant” and “Unrelated Persons” and, to read as follows:

**Detached Dwelling Unit With No More Than Two Unrelated Persons** shall mean any number of related persons and no more than one additional person who is unrelated to the group of related persons may occupy a Detached Dwelling Unit.

**Detached Dwelling Unit With No More Than Four Unrelated Persons** shall mean any number of related persons and no more than 3 additional persons that are unrelated to the group of related persons may occupy a Detached Dwelling Unit.

~~*Family* shall mean any number of individuals living together in a single dwelling unit in which not more than 4 individuals are unrelated by blood, marriage or adoption. Foster children residing in licensed foster care homes shall not be included in the calculation of the number of unrelated individuals living together in a single dwelling unit. Licensed foster care homes shall comply with any state mandated restrictions on the number of children permitted to reside in the dwelling unit.~~

**Guest** shall mean a person who is visiting either an owner or a tenant, either during the daytime or staying overnight, and is not paying any monetary or other consideration such as exchanging other rights or privileges, or paying maintenance fees or utilities for the right to occupy the unit.

**Home Occupation** shall mean any occupation or activity conducted within a dwelling unit which is clearly incidental and subordinate to the use of the premises for dwelling purposes, provided that:

(4) Only members of the ~~family residing on~~ household who lawfully occupy the premises are employed.

**Multi-Family Dwelling Unit** shall mean the occupancy of a multi-dwelling residential structure that does not meet the definition of a Single-Family Attached Dwelling Unit and where tenancy is arranged on a month-to-month or longer basis. Examples of Multi-Family Dwelling Units include triplexes, fourplexes, apartments, and condominiums.

**Multifamily (residential) development ~~or dwelling~~** shall have the meaning assigned in section 62-1 of the Land and Site Development Ordinance.

**Occupancy or Occupy** shall mean the use ~~or intended use of the land or buildings by proprietors or tenants.~~ of a dwelling unit or any portion thereof for living and sleeping purposes by a person, other than as a guest. For the purposes of this definition, any person, including a guest who spends more than

21 nights in a dwelling unit in a 12-month period, shall be deemed to Occupy the dwelling unit. Any person who uses the property as a legal address for any purpose shall be presumed to be an Occupant.

**Occupant** shall mean a person who occupies a dwelling unit.

**Related Persons** for the purposes of this Chapter shall mean persons who are related by blood, adoption or marriage, and children with familial status within the meaning of Title 42 United States Code, Section 3602(k) are deemed to be related persons for the purposes of this Chapter.

**Second Family** shall mean a second, separate group of Related Persons. One person unrelated to a group of Related Persons shall not constitute a Second Family.

**Single-Family Attached Dwelling Units** shall mean Single-Family Dwelling Units that are separated by vertical lot line walls but that are not stacked vertically and includes any Duplex.

**Single-Family Detached Dwelling Unit** shall mean a free standing, unattached Single-Family Dwelling Unit, that is restricted as to the number of Unrelated Persons allowed to occupy the dwelling, as set forth in this Chapter. Notwithstanding the foregoing, a Second Family may Occupy a “Single-Family Detached Dwelling Unit” on a temporary basis for a period not to exceed six months in any consecutive 12 month period.

~~**Single-Family Dwelling Unit** shall mean a dwelling unit designed for and occupied by one family and that is surrounded by open space residential structure containing no more than one Dwelling Unit, as opposed to a Multi-Family Dwelling Unit, and which is designed to be occupied by one or more persons who maintain a common household. A single family dwelling unit may have a second family comprised entirely of individuals related by blood, marriage or adoption, residing therein on a temporary basis for a period not exceeding six months in any calendar year.~~

**Tenant** means a person entitled only under the terms of a rental agreement to occupy a dwelling unit to the exclusion of others.

**Unrelated Persons.** Persons who are not related by blood, adoption or marriage are deemed to be unrelated persons for the purposes of this Chapter. Notwithstanding the foregoing, for the purposes of this definition, children with familial status within the meaning of Title 42 United States Code, Section 3602(k) and up to six (6) persons with handicaps within the meaning of Title 42 United States Code, Section 3602(h) living in a group arrangement will not be counted as unrelated persons.

## SECTION 2.

That Section 130-31 “R-NC, Residential - Neighborhood Conservation”, Subsection (b) is amended as follows:

Section 130-31

(b) *Permitted uses.*

Detached dwelling units w/ no more than two unrelated ~~people~~ persons;

SECTION 3.

That Section 130-31 “R-NC, Residential - Neighborhood Conservation”, Subsection (f) *Other regulations* is amended as follows:

Section 130-31

(f) *Other regulations*

(4) Any dwelling unit permitted in this zoning district may have a ~~second family~~ Second Family according to this Chapter comprised entirely of individuals related by blood, marriage or adoption, residing therein on a temporary basis for a period not exceeding 6 months in any calendar year consecutive 12 month period.

SECTION 4.

That Section 130-34 “Special and supplementary regulations” shall be amended by adding subsection (p) to read as follows:

(p) *Prima facie proof of occupancy of a detached dwelling unit.* Prima facie proof of occupancy of a detached dwelling unit by a given number of Unrelated Persons is established in any prosecution for violation of Sections 130-10 (b) and 130-11(b) (Permitted uses. Detached dwelling units with no more than 4 unrelated persons) and 130-31 (b) (Permitted uses. Detached dwelling units with no more than two unrelated persons) if it is shown that the given number plus one or more vehicles with registrations to persons having different surnames and addresses were parked overnight at the dwelling unit, either on the premises of the home or on public rights-of-way adjacent to the home, a majority of nights in any 21 day period. This establishment of a prima facie level of proof in this subsection does not preclude a showing of "occupancy" of a dwelling unit by a person in any other manner.

SECTION 5.

That Section 62-1. General definitions shall be amended by revising the definition for Multifamily (residential) development or dwelling to read as follows: *Multifamily (residential) development ~~or dwelling~~* shall mean a structure or grouping of structures where each structure contains 3 or more dwelling units intended for human habitation, not including hotels, motels and similar lodging uses. Although multifamily developments are for residential use, due to the higher intensity of the sites, multifamily developments shall follow all requirements applicable to nonresidential developments and shall be submitted for a full review by the site development review committee.

SECTION 6.

That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION 7.

That the Code of the City of Bryan, Texas, as amended, shall remain in full force and effect, save and except as amended by this Ordinance.

SECTION 8.

That if any section, paragraph, sentence, clause, phrase or word of this ordinance be declared unconstitutional or invalid for any purpose by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby and to this end the provisions of this Ordinance are declared to be severable.

SECTION 9.

That it is hereby found and determined that the meetings at which this ordinance was passed were open to the public, as required by Section 551.001 et seq., Texas Government Code, and that advance public notice of time, place and purpose of said meetings was given.

SECTION 10.

It is the intention of the City Council that this Ordinance shall become a part of the Code of the City of Bryan, Texas, and it may be renumbered and codified therein accordingly.

SECTION 11.

That, the City Secretary is directed to publish this Ordinance in a newspaper of general circulation in the City of Bryan in accordance with the provisions of Section 9 of the City Charter, which publication shall be sufficient if it contains the caption, penalty, and effective date of this Ordinance.

SECTION 12.

This Ordinance will be effective from and after its final passage and publication as required by law. The effective date of this Ordinance will be \_\_\_\_\_, 2016.

PRESENTED AND GIVEN first reading the 23<sup>rd</sup> day of August, 2016, at a \_\_\_\_\_ meeting of the City Council of the City of Bryan, Texas; and given a second reading, passed and approved on the 13<sup>th</sup> day of September, 2016, by a vote of \_\_\_\_\_ yeases and \_\_\_\_\_ noes at a \_\_\_\_\_ meeting of the City Council of the City of Bryan, Texas.

ATTEST:

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Mary Lynne Stratta, City Secretary

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Jason P. Bienski, Mayor

APPROVED AS TO FORM:

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Janis K. Hampton, City Attorney

**EXCERPT FROM PLANNING AND ZONING COMMISSION WORKSHOP MEETING  
MINUTES OF APRIL 21, 2016:**

- 6. EXECUTIVE SESSION -- The Planning & Zoning Commission has determined a necessity to go into a closed to the public session under the provision of Section 551, Texas Government Code, and the following topics may be discussed: under the authority of Section 551. 071, consultation with attorney - receive legal advice regarding the Federal Fair Housing Act and zoning regulations for district R-NC Residential-Neighborhood Conservation.**

The meeting was called into a closed to the public session at 5:26p.m.

*Commissioner Madison entered the meeting at 6:08pm.*

- 7. OPEN SESSION FOLLOWING EXECUTIVE SESSION, IF NECESSARY, for questions to staff and possible direction to staff regarding the Federal Fair Housing Act and zoning regulations for district R-NC Residential-Neighborhood Conservation (No action will be taken).**

The meeting was called into an open session at 6:10pm.

By consensus, Commissioners designated a subcommittee consisting of Commissioners Bush and Swearingen to review, investigate, and report on possible changes to the regulations for the Residential – Neighborhood Conservation (R-NC) zoning district.

**EXCERPT FROM CITY COUNCIL SECOND REGULAR MEETING MINUTES OF JUNE 7,  
2016:**

**10. REGULAR AGENDA**

**d. Consideration – Residential Neighborhood Conservation (RNC) Ordinance**

Councilmember Peña moved to direct the City Attorney to have a draft ordinance of the previously discussed changes to the RNC ordinance to the Council by the last meeting in July 2016. The motion was seconded by Councilmember Southerland. This agenda item was submitted by two Councilmembers. Councilmember Southerland then moved to amend the motion to substitute the last meeting in August 2016 for the last meeting in July 2016. The motion was seconded by Councilmember Saenz. Concern was expressed about the length of time it was taking to bring forward a proposed new ordinance regarding RNC zoning. Council was reminded that text changes to the zoning ordinance had to be considered by the Planning and Zoning Commission first, and that the Commission was working on this topic. The motion to amend carried unanimously, and the main motion as amended carried unanimously.

**EXCERPT FROM PLANNING AND ZONING COMMISSION WORKSHOP MEETING  
MINUTES OF JULY 7, 2016:**

**3. PLANNING AND ZONING COMMISSION SUBCOMMITTEE PRESENTATION, DISCUSSION, AND POSSIBLE DIRECTION TO STAFF CONCERNING POSSIBLE AMENDMENTS TO THE TEXT OF THE ZONING ORDINANCE ADDING, REVISING, AND/OR REMOVING CERTAIN DEFINITIONS AS THEY RELATE TO OCCUPANCY OF SINGLE-FAMILY DWELLING UNITS.**

*Commissioner Leo Gonzalez entered the meeting at 5:21 p.m.*

Commissioners discussed possible amendments and current definitions and possible amendments to address current obstacles to enforcement. Commissioners agreed to continue discussion at the next workshop meeting. No action was taken.

**EXCERPT FROM PLANNING AND ZONING COMMISSION REGULAR MEETING MINUTES  
OF JULY 21, 2016:**

**7. PROPOSED AMENDMENTS TO THE TEXT OF BRYAN’S CODE OF ORDINANCES – A PUBLIC HEARING WILL BE HELD FOR EACH ITEM (Commission makes recommendation; City Council has final approval).**

**a. Bryan Code of Ordinances Chapter 130 and Chapter 62**

*A recommendation to the Bryan City Council regarding proposed amendments to the text of Bryan Code of Ordinances Chapter 130, Zoning, and Chapter 62, Land and Site Development, specifically by amending Article I, “General”, Section 130-3 “Definitions”, removing unnecessary definitions, revising definitions of “Single-Family Dwelling Unit,” “Home Occupation”, “Multifamily (Residential) Development or Dwelling” and “Occupancy” and adding definitions for “Detached Dwelling Unit”, “Occupy”, “Guest”, “Unrelated Persons”, “Multi-Family Dwelling Unit,” “Detached Dwelling With No More Than Two Unrelated Persons,” “Detached Dwelling Units With No More Than Four Unrelated Persons,” “Occupant,” “Related Persons,” “Second Family,” “Single-Family Detached Dwelling Unit,” “Single-Family Attached Dwelling Units,” “Tenant” and “Unrelated Persons”, and by amending Article 2, “Zoning Districts”, to clarify the permitting of a second family on a temporary basis, and by amending Article 3, “Other Regulations,” Section 130-34, by adding a subsection to establish prima facie proof of occupancy and to amend Chapter 62, “Land and Site Development”, Section 62-1 “General Definitions” to revise the definition of “Multifamily (Residential) Development or Dwelling”. (S. Doland)*

Ms. Doland presented the proposed text amendment to the Bryan Code of Ordinances Chapters 130 and 62.

Mr. Leeper informed Commission of errors in Ordinance drafted for meeting by legal team and clarification on those errors are in order to resolve any misunderstandings.

The public hearing was opened.

No one came forward.



The public hearing was closed.

**Commissioner Bush moved to recommend approval of the proposal to amend the text of Bryan Code of Ordinances Chapter 130, Zoning, and Chapter 62, Land and Site Development. Commissioner Swearingen seconded the motion.**

Commissioners commented:

- This ordinance has been successful in the past as is; however, some definitions need to be updated to stay in compliance with State and Federal law.

**The motion passed by a vote of 5-0. Commissioners Gonzalez, Krolczyk, Conlee, and Incardona did not participate in discussion or voting due to a conflict of interest.**