

BERRYVILLE ZONING ORDINANCE

5-8-00

AN ORDINANCE TO BE KNOWN AS THE CITY OF BERRYVILLE ZONING ORDINANCE; ESTABLISHING ZONING DISTRICTS; ADOPTING AND IDENTIFYING THE OFFICIAL ZONING MAP; DEFINING ZONING DISTRICTS; PROVIDING FOR THE ZONING OF ANNEXED TERRITORY; AND PROVIDING FOR REZONING AREAS; ESTABLISHING REGULATIONS ON MOBILE/MANUFACTURED HOUSING WITH THE CITY LIMITS OF BERRYVILLE; ESTABLISHING REGULATIONS FOR BUILDING PERMITS AND PERMIT FEES; AND TO PROVIDE FOR ITS ENFORCEMENT BY IMPOSING A FINE OF NOT LESS THAN FIFTY DOLLARS (\$50.00) NOR MORE THAN ONE THOUSAND DOLLARS (\$1000.00).

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

DEFINITIONS

All words used in this ordinance shall carry their customary meanings except where specifically defined herein. Words used in the plural include the singular, and the present tense includes the future; the word "building" includes the word "structure"; the word "lot" includes the word "plot" or "parcel"; the word "person" includes a corporation as well as an individual; "occupied" or "used" shall be construed to include the words, "intended, arranged, or designed to be used or occupied"; the term "shall" is always mandatory.

Accessory use: A use customarily incidental to the principal use of the lot.

Alley: A narrow service way providing a secondary means of access to abutting properties.

Alterations/Remodel: A change or rearrangement in the structural parts or in the existing facilities, or an enlargement of building or structure.

Building: any roofed over structure intended for shelter.

Building, accessory: Subordinate building, the use of which is incidental to that of a main building on the same lot.

Building height: The vertical distance measured from the average elevation of the finished grade at the front of the building to the highest point of the roof for flat roofs, to the deck line of mansard roofs, and to the mean height between eaves and ridge for gable, hip and gambrel roofs.

Building, main: A building devoted to the principal use of the lot on which it is located.

City: City as used in this ordinance shall mean the City of Berryville.

Commercial use: Any land or building designed or designated to be used for commercial purposes, which shall include such land or buildings used for retail sales and office use.

Coverage: The percent of lot area covered by buildings.

Dwelling: Any building used primarily as living quarters for one or more families.

Family: One or more persons occupying a premises and living as a nonprofit housekeeping unit.

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Garage, private: An accessory building for the storage of one or more motor vehicles, provided that no business, occupation or service is conducted for profit therein nor space therein for more than one car be leased to a nonresident of the premises.

Governing body: The city council of the city or any duly appointed official, officer, or agency designated by said city council to execute the provisions of the zoning ordinance.

Home occupation: A profession or an occupation which:

- (a) Is clearly incidental and secondary to the use of a dwelling for residential purposes and does not change the character thereof.
- (b) Produces no offensive noise, vibration, smoke, dust, odor, heat, or glare.
- (c) Employs not more than one person outside the immediate family residing on the premises.
- (d) Offers no articles for sale except such as may be produced on premises.
- (e) Is carried on wholly within the dwelling on the premises with no exterior storage, no exterior display and no exterior advertising except a small nameplate no larger than one (1) square foot.
- (f) A home occupation includes, but is not limited to the following:

Art studio

Dressmaking

Professional office of a physician, dentist, lawyer, engineer, architect or accountant, within a dwelling occupied by same.

Teaching, with musical instruction limited to a single pupil at a time.

Although, a home occupation shall not mean to include:

Barbershops and beauty shops

Commercial stables and kennels

Restaurants

Uses of similar character

Junkyard: A lot, land, or portion thereof used primarily for the collecting, storage and sale of junk including paper, rags, scrap metal or other discarded material, or the dismantling, demolition, sale or abandonment of automobiles or other vehicles or machinery or parts thereof.

Lot: A parcel of land considered as a unit occupied or to be occupied by a building and its accessory buildings together with such open spaces as are required under this ordinance.

Lot, corner: A lot at the junction of and fronting on two (2) or more intersection streets.

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Lot, depth of: A mean horizontal distance between the front and rear lot lines.

Lot, width of: The mean width measured at right angles to its depth.

Lot lines: Any line dividing one lot from another.

Mobile Home/Manufactured Home: A manufactured, transportable, single-family dwelling unit eight (8) feet or more wide and thirty (30) feet or more long, suitable for year around occupancy and containing water supply, waste disposal and electrical conveniences.

Nonconforming uses: Use of a building or of land that does not conform to the regulations as to use for the district in which it is situated.

Residential use: Any land or building designed or designated to be use for residential purposes which shall include such land or buildings used for one or two family residences, apartment houses and multiple-family dwellings.

Setback: The minimum horizontal distance between the street line and front line of a building.

Street: A public thoroughfare, which affords the principal means of access to the abutting property.

Street line: The legal line between street right-of-way and abutting property.

Structural alteration: Any change in the physical structure of a building.

Structure: Anything constructed or erected, the use of which requires location on the ground or attached to something having location on the ground.

Use: The specific purpose for which land or a building is designed, intended, or for which it is or may be occupied or maintained.

Yard: An unoccupied space open to the sky, on the same lot with a building.

Yard, front: A yard between the front line of the building and the front line of the lot and extending the full width of the lot.

Yard, rear: A yard between the rear line of the building and the rear lot line and extending the full width of the lot.

Yard, side: A yard between the building and the sidelines of the lot and extending from the front yard to the rear yard.

Zoning Board: A group of five people which includes the Mayor/City Manager/Secretary and three (3) persons appointed by the Mayor, for the purpose of hearing and deciding an appeal that alleges error in an order, requirement, decision, or determination made by any administrative official; hear and decide special exceptions to the terms of a zoning ordinance when the ordinance requires the board to do so; authorize in specific cases a variance from the terms of a zoning ordinance if the variance is not contrary to the public interest and due to special conditions, a literal enforcement of the ordinance would cause an unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done; and hear other matters as authorized by this ordinance.

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SECTION 1.

Zoning Districts

For the purpose of promoting the public health, safety, morals, and general welfare of the community, the City is hereby divided into the following types of districts:

1. Residential
2. Business
3. Business-Alcohol
4. Industrial

SECTION 2.

Zoning Map

The City is hereby divided into zones as shown on the official zoning map which is hereby adopted by reference and declared to be a part of this ordinance. The zoning map is color coded for each of the categories set out above. The official zoning map shall be identified by the signature of the mayor, attested by the City Manager, and bearing the seal of the City under the following words: "This is to certify that this is the official zoning map referred to in Section 2 of the City Zoning Ordinance." The official zoning map shall further have inscribed thereon the date of adoption of this ordinance.

SECTION 3.

Zoning Districts Definitions

The various zones or districts into which the City is divided are defined as follows:

- (1) "Residential" is defined as any area limited to residential dwellings where no character of commercial enterprise is carried out.
- (2) "Business" shall mean any place where any character of retail or wholesale business is maintained, but excluding industry or industrial as hereinafter defined. Business, as used herein, shall not include any place where alcoholic beverages are sold or possessed for the purpose of resale. The term "business" as used herein shall further exclude any private club, fraternal organization, or any such organization where alcoholic beverages are maintained so that the same may be dispensed to the members or guests of such club or other organization.
- (3) "Business-Alcohol" shall include any character of business where alcoholic beverages are sold or possessed for the purpose of sale, as well as any club, private club or fraternal organization where alcoholic beverages are maintained so that the same may be dispensed to the members or guests of such club or other organization.
- (4) "Industrial" shall mean any place where any character of manufacturing is carried out.

SECTION 4.

Annexation

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In the event that the City shall annex any territory, the ordinance of annexation shall designate the zone or zones into which such newly annexed territory shall be included and the official zoning map shall be corrected to reflect such action.

SECTION 5.

Rezoning

The City Council may, within its discretion, rezone any area within the City; however, no ordinance shall be passed making any changes in the zoning ordinance of the City unless an application has been filed with the City at least twenty (20) days prior to the enactment of such ordinance. Any applicant for a change in zoning shall give notice in writing by certified mail to all property owners owning property within 200 ft. of the property sought to be rezoned and such notice shall state the time and date upon which said matter shall be presented to the City Council, and all interested persons shall be afforded an opportunity to appear before the City Council and speak for or against the proposed zoning change. Said notice provided for herein shall be mailed not less than ten (10) days prior to the hearing provided for before the City Council.

SECTION 6.

Disclaimer

Each and every provision, paragraph, sentence and clause of this ordinance has been separately considered and passed by the City Council of the City of Berryville, and each said provision, paragraph, sentence and clause would have been separately passed without any other provision, and if any provision, paragraph, sentence, or clause hereby should be ineffective, invalid, or unconstitutional for any cause, it shall not impair or affect the remaining portion nor any other part thereof, but the valid portion shall be enforced in the same manner as if it had been passed alone.

SECTION 7.

Zoning Board

A Zoning Board shall be established in the City of Berryville. This board shall consist of five individuals made up of the Mayor, City Manager/Secretary, and three (3) citizens of Berryville, which will be appointed by the Mayor. The three (3) citizens of Berryville will be serving for a two (2) year period.

SECTION 8.

Construction Materials

Used building materials will not be allowed for the exterior construction of any new building, expansion, or remodel with the City of Berryville unless those materials are approved by the Mayor, City Manager/Secretary or the Zoning Board.

SECTION 9.

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Appeal Process

Permits may be issued by the City Manager/Secretary or Mayor. Should a citizen be denied a permit by the City Manager/Secretary or Mayor, an appeal to the Zoning Board may be filed with the City Manager/Secretary. The City Manager/Secretary will set a hearing date that is acceptable to the Zoning Board at which time a majority vote shall resolve the appeal.

SECTION 10.

Building Permit

No person shall commence the construction of any building, structure or remodel within the limits of the City of Berryville, Texas unless that person has first obtained a building permit. Any person desiring a permit shall make application to the City Manager/Secretary or Mayor. The application shall include a building plan and a list of construction materials. The building or structure must fall within the higher standard of that neighborhood. Once it is determined that the building or structure meets the guidelines of the City of Berryville, a permit shall be issued. The Berryville City Council in the form of a resolution shall set permit fees. Permits must be displayed in a manner that the permit is visible from a public street and returned to the City Manager/Secretary or Mayor after the construction is completed. If construction begins before obtaining a permit and the construction does not meet City requirements, the City shall require alterations by the property owner, or require that the building, structure or remodel be removed. The property owner shall be deemed guilty of a misdemeanor and upon conviction will be fined as set forth in Section 15 of this ordinance.

SECTION 11.

Subdivision Restrictions

Residential buildings will be constructed within the restrictions of the respective subdivision except the outside of building is to be completed within 120 days of starting date. All sewer facilities will be installed in accordance with State and/or Upper Neches River Water Authority rules and regulations.

SECTION 12.

Mobile Home / Manufactured Home Standards

Mobile Home / Manufactured homes shall include all prefabricated homes and all mobile homes. Manufactured homes are restricted to designated areas of Berryville, Texas. These designated areas are:

- a) the Three Points Mobile Home Estates
- b) the 1000 Pines Ranch Estates West Subdivision (north and west of the Cobb inlet)
- c) the Holiday Hills Subdivision.

All homes of this type placed within the city limits of the City of Berryville, Texas, starting from the revised date of this ordinance, cannot exceed five (5) years of age, must be HUD Approved and bear the HUD Seal or approved by the Berryville City Council.

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Existing mobile homes in undesignated areas of Berryville may be replaced if upgrading or replacing, due to the loss of the mobile home or if the mobile home is deemed to be un-inhabitable. A moving permit must be obtained from the City Manager/Secretary or the Mayor prior to moving a manufactured home into the city limits of Berryville, Texas. When application for a moving permit is requested, a photo of the mobile/manufactured home must be presented along with proof of age for the home and have a HUD Approval Seal. The moving permit fee will be set by the Berryville City Council. All mobile/manufactured homes placed within the city limits of Berryville must be underpinned with tires and axels removed and steps placed at all exterior doors. The home must be placed at least twenty (20) feet from the front line of the lot and at least ten (10) ft. from the back and sides of the lot. Providing false information will result in a fine of up to \$1000.00 and the house must be removed from the City of Berryville within five (5) days of notice from the City of the City of Berryville will have the house removed and stored at the owner's expense.

AMENDMENT TO SECTION 12 ON JULY 10, 2000:

Property owners residing in mobile/manufactured homes, on or before May 8, 2000, may, in the event of a loss of the home by fire, acts of nature or to upgrade the home, replace the residents mobile/manufactured home with a mobile/manufactured home not to exceed five (5) years of age, HUD APPROVED and bear the HUD SEAL. This paragraph does NOT include any mobile/manufactured home that is not owner occupied.

Persons owning more than one property in a mobile/manufactured home restricted area, shall not move an existing mobile/manufactured home from one property in the restricted area to another property in a restricted area.

PASSED AND APPROVED THIS 17th-DAY OF JULY 2018

SECTION 13.

Special Permits

The City of Berryville, Texas, shall require "Special Permits" for other activities not outlined in this ordinance but by Berryville City Council resolution. A "Special Permit" shall be required for repairs due to an act of nature. These permits will be issued by the City Manager/Secretary or the Mayor. A "Special Permit" shall not be granted unless the Zoning Board finds that the use for which the permit is sought will not be injurious to the neighborhood or detrimental to the public welfare. Permits must be displayed in a manner where the permit is visible from the public street. After construction is completed, return the permit to the City Manager/Secretary or the Mayor. The Berryville City Council will set the "Special Permit" fees. If construction begins without obtaining a permit and/or the construction does not meet City requirements, the City will require alterations by the property owner, or require that the building, structure or remodel be removed. Corrections to the building, structure or remodel must be completed within sixty (60) days of the date of notification. The property owner may be issued a summons to court and a fine will be imposed.

SECTION 14.

House Moving Permit

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No house or structure may be moved into the city limits of the City of Berryville, Texas, for restoration or any other purpose without approval from the Zoning Board. An application must be filed with the City Manager/Secretary or the Mayor. The City Manager/Secretary shall set a hearing date that is acceptable to the Zoning Board at which time a majority vote shall rule. The Berryville City Council will set the permit fee. Failure to obtain a "Special Permit" will result in a fine not to exceed one-thousand (\$1000.00) dollars, and the structure must be removed from the City of Berryville within five (5) days of the notice from the City or the City of Berryville will have the structure removed and stored at the owner's expense.

SECTION 15.

Violation and Penalties

Any person, firm or corporation violating any of the provisions of this ordinance, or failing to observe any of the provision hereof, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum of not less than Fifty (\$50.00) dollars nor more than one-thousand (\$1000.00) dollars and each and every day during which this ordinance or any part thereof shall be violated shall be deemed a separate offense and punishable as such.

SECTION 16.

Regulations for Nonconforming Uses

(A) Any lawful use of property existing at the time of the enactment of this ordinance which does not conform to the regulations prescribed herein for the respective districts, shall be classified a non conforming use. Such uses shall be allowed to continue although the use does not conform to the regulations prescribed by this ordinance, but in no case shall the property be classified as a conforming use. A building may be structurally altered subject to the following regulations:

- (1) Any structure or part thereof that is declared unsafe, may be restored to a safe condition.
- (2) Any nonconforming building may not be reconstructed or structurally altered during its life to exceed a cost of fifty (50) percent of the appraised value, as set by the Henderson County Appraisal District, of the building unless the building is changed to conform to the regulations of the district.
- (3) There shall be no extension of any building for a nonconforming use.
- (4) Any building damaged by fire or other causes to the extent of fifty (50) percent of its appraised value shall not be repaired or rebuilt unless it is in conformity with the regulations of the respective district.
- (5) Upon the discontinuance of a nonconforming use for a period of one year, the use shall not be re-established. Any future use shall be in conformity with the regulations of the respective district.
- (6) No nonconforming use changed to a conforming use shall be allowed to revert back to a nonconforming use.

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- (7) No nonconforming use shall be extended to replace a conforming use; however, upon property application and notification by the applicants to persons within the area as prescribed herein for the purposes of rezoning and presenting it to the Zoning Board for their consideration, the Zoning Board may recommend that a nonconforming use shall be upgraded to another nonconforming use; provided, however, that an upgrading shall consist of less traffic, of less danger to the general public, of a generally neater appearance of the premises, and generally to consider whether or not that such nonconforming use shall be of a greater benefit to the area in general than the prior nonconforming use.

SECTION 17.

Specific Use Permits

- (A) The City Council of the City of Berryville, Texas, after public hearing and proper notice of all parties affected and after recommendations by the Zoning Board may authorize the issuance of specific use permits.
- (B) The Zoning Board in considering and determining its recommendations to the City Council on any request for a specific use permit may require from the applicant, plans, information, operating data and expert evaluation concerning the location, function and characteristics any building or use proposed. The City Council may, in the interest of public welfare and to ensure compliance of this ordinance, establish conditions of operation, locations, arrangement and construction of any use for which a permit is authorized. In authorizing the location for specific use permits, the City Council may impose such developments standards and safeguard as the conditions and locations indicate, important to the welfare and protection of adjacent property from excessive noise, vibration, dust, smoke, fumes, gas, odor, explosion, glares, offensive view, or other undesirable or hazardous conditions.
- (C) Anyone wishing to apply for a specific use permit shall first pay to the City Manager/Secretary a fee which shall be set by the City Council through resolution. The City shall notify property owners within two hundred (200) feet of the described property, as well as any other form of advertising needed to notify the public of a specific use permit.

SECTION 18.

Interpretation of ordinance

- (A) *Interpretation, conflict with other laws.* In the interpreting or applying the provisions of this zoning ordinance, they shall be held to be the minimum requirements adopted for the promotion of public health, morals, safety, convenience, conform and general welfare. Whenever the requirements of this ordinance are in conflict with the requirements of any other local statute, ordinance or regulation, the most restricted or that imposing higher standards shall govern.

SECTION 19.

Amendments and changes

The governing body may, from time to time, amend this ordinance.

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SECTION 20.

Travel or Camping Trailers

Travel trailers or camping trailers shall be permitted in any location, provided that such not be used for permanent dwelling purposes and provided further that such shall not be permitted to be parked on any streets, parkways, alleyways, or within 10 feet of any property line. Furthermore, these trailers may be restricted from such parking through addition subdivision, HOA's, POA's or other deed restrictions. Travel trailers may be used for shelter for a period of not more than 120 days during the construction of a home. Travel trailers may be used as a temporary shelter for no more than 10 consecutive days or 10 days per calendar year unless further restricted by deed.

SECTION 21.

Creating an Emergency

The fact that the City of Berryville now has no ordinance governing matters regulated herein so as to protect the citizens of the City of Berryville in their property and persons, as aforesaid, creates an emergency, which is here and now declared, and this ordinance shall take effect and be in force, from and after its passage and publication as provided by law.

SECTION 22.

This ordinance supersedes ordinance 12-4-78B and ordinance 8-25-83B.

PASSED AND APPROVED THIS 8TH DAY OF MAY 2000.

PASSED AND APPROVED THIS 17TH DAY OF JULY 2018.

Ron Hewlett _____

Ron Hewlett, Mayor

Attest:

Brenda Lankford _____

Brenda Lankford, City Secretary

REVISED AND AMENDMENT TO SECTION 12 OF THIS ORDINANCE 7/17/18.

AMENDMENT TO SECTION 12 OF THIS ORDINANCE 7/10/00.

AMENDMENT TO SECTION 12 OF THIS ORDINANCE 1/12/04

