

ORDINANCE _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KILLEEN, TEXAS, AMENDING CHAPTER 31 OF THE CODE OF ORDINANCES OF THE CITY OF KILLEEN; PROVIDING FOR AMENDMENTS TO THE CITY'S LAND USE REGULATIONS; PROVIDING FOR CERTAIN REGULATIONS REGARDING VAPOR STORES; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

WHEREAS, the City of Killeen, Texas is a home-rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code;

WHEREAS, the City of Killeen has declared the application and enforcement of the City's zoning regulations to be necessary for the promotion of the public safety, health, convenience, comfort, prosperity and general welfare of the City; and,

WHEREAS, the City Council desires to amend land use regulations pertaining to vapor stores; and,

WHEREAS, the City Council finds that such amendments are necessary to protect the public health, safety, and welfare of the public; and,

WHEREAS, a public hearing was held by the Planning and Zoning Commission of the City of Killeen on the 4th day of March, 2024 at 5:00 p.m.; and,

WHEREAS, a public hearing was held by the City Council of the City of Killeen on the 9th day of April, 2024 at 5:00 p.m.; and,

WHEREAS, due notice of all public hearings was provided as required by law;

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

SECTION I. That Chapter 31 of the City of Killeen Code of Ordinances is hereby amended as follows:

Sec. 31-2. Definitions.

For the purpose of this chapter, certain terms and words are hereby defined. Words used in the present tense shall include the future; the singular number shall include the

plural and the plural the singular; the word "building" shall include the word "structure;" the word "shall" is mandatory and not directive; the word "lot" includes the word "plot;" the term "used for" includes the meanings "designed for" or "intended for." Such words and terms are as follows:

Accessory use or building shall mean a subordinate use or building customarily incident to and located on the same lot occupied by the main use or building.

All weather surface on privately owned property shall consist of Portland cement concrete or an impervious bituminous surface over a compacted base or other surface approved by the building official. The parking surface must be capable of retaining paint or striping material.

Alley shall mean a public way which affords only a secondary means of access to property abutting thereon.

Animal production shall mean the raising and sales of animals or production of animal products produced on site, to include eggs or dairy products, on an agricultural or commercial basis. Typical uses include, but are not limited to, grazing, ranching, dairy farming and poultry farming, and do not include operating feed lots.

Apartment complex shall mean five (5) or more attached dwelling units on one (1) lot.

Automotive parts store shall mean an establishment engaged in the retail sales of a variety of parts for vehicles of any kind.

Boardinghouse or lodginghouse shall mean a building other than a hotel where sleeping rooms are rented to four (4) or more adults for compensation, pursuant to previous arrangements for definite periods of time, but not to the public or transients.

Building shall mean any structure designed or built for the support, enclosure, shelter or protection of persons, animals, chattels or property of any kind.

Building, height of, shall mean the vertical distance from the grade to the highest point of the coping of a flat roof or to the deck line of a mansard roof, or to the mean height level between eaves and ridge for gable, hip and gambrel roofs.

Building line shall mean a line parallel or approximately parallel to the street line and beyond which buildings may not be erected.

Cemetery shall mean a burial place for deceased humans.

Child care facility shall mean a facility that furnishes care, training, education, custody, supervision and guidance of a child or group of children, who are not related by blood, marriage or adoption to the owner or operator of the facility, for all or part of a twenty-four-hour day.

Clinic shall mean an establishment where patients, who are not lodged overnight, are admitted for examination and treatment by a group of physicians practicing medicine together.

Commercial communication tower shall mean a tower built and designed for commercial communication usage including, but not limited to, radio, television and microwave towers.

Crop production shall mean the raising, harvesting and sales of tree crops, row crops or field crops on an agricultural or commercial basis, produced on site, including, but not limited to, packing and processing.

Day care center shall mean a child care facility that provides care for more than twelve (12) children under fourteen (14) years of age or less than twenty-four (24) hours a day. It does not include a group day care home or drop-in care center.

Drop-in care center shall mean a child care facility that provides care for children under fourteen (14) years of age for part of the day. It does not provide regular care for the same child. It does not include a group day care home or day care center.

Dwelling shall mean any building or portion thereof which is designated for or used for residential purposes.

Dwelling, multifamily, shall mean a building designed for or occupied by three (3) or more families.

Dwelling, single-family, shall mean a building designed for or occupied by one (1) family.

Dwelling, two-family, shall mean a building designed for or occupied by two (2) families.

Family shall mean any number of individuals living together as a single housekeeping unit, in which not more than three (3) adults are unrelated by blood, marriage, adoption, or guardianship and occupying a dwelling unit.

Frontage, block, shall mean all the property on one (1) side of a street between two (2) intersecting streets (crossing or terminating), measured along the line of the street, or if the street is dead-ended, then all of the property abutting on one (1) side between an intersecting street and the dead-end of the street.

Halfway house shall mean a facility operated under the authority of the Texas Department of Criminal Justice for the Federal Bureau of Prisons for persons on release from more restrictive custodial confinement or initially placed in lieu of such more restrictive custodial confinement, wherein supervision, rehabilitation, and counseling are provided to mainstream residents back into society, enabling them to live independently.

Hotel shall mean a building in which lodging or boarding and lodging are rented out to the public for a period of not less than one (1) night and not more than twenty-nine (29) consecutive nights for a fee. This term includes hotels, motels, bed and breakfasts, inns, extended stay hotels, and long-term stay hotels.

Hotel Occupancy Tax shall mean the hotel occupancy tax required to be assessed and collected for the operation of any hotel or short term rental and paid pursuant to Chapter 351 of the Texas Tax Code and Killeen Code of Ordinances Chapter 27, Article IV.

Housekeeping unit shall mean a group of persons jointly occupying a single dwelling unit, including the joint use of and responsibility for common areas, and sharing household activities, responsibilities and expenses.

Loading space shall mean a space within the main building or on the same lot therewith, providing for the standing, loading or unloading of trucks, and having a minimum dimension of twelve (12) by thirty-five (35) feet and a vertical clearance of at least fourteen (14) feet.

Lot shall mean a parcel of land occupied or intended for occupancy by a use permitted in this chapter, including one (1) main building together with its accessory buildings, the open spaces and parking spaces required by this chapter, and having its principal frontage upon a street or upon an officially approved place.

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

Lot, width of, shall mean the mean horizontal distance between side lot lines, as measured in a straight line from points at the front building setback line on each side lot line.

Manufactured housing shall mean a residential housing unit fabricated in an off-site manufacturing facility for installation or assembly at the building site, bearing a label certifying that it is built in compliance with the Federal Manufactured Housing Construction and Safety Standards (see 24 CFR 3280 for legal definition) and Manufactured Housing Standards Act, section 5521f V.A.T.S.

Nonconforming use, building or yard shall mean a use, building or yard, existing legally at the time of passage of the ordinance from which this chapter is derived, which does not, by reason of design or use, conform with the regulations of the district in which it is situated.

Outside storage and display shall mean a primary land use providing for the incidental outdoor storage or display of commodities, materials, goods, equipment, vehicles or merchandise in its normal day-to-day business activities. This definition excludes new and used sale or lease of automobiles, motorcycles recreational vehicles, boats or watercrafts. This definition does not include temporary outside merchandise display, such as a sidewalk sale.

Parking space, off-street, shall mean an area of not less than one hundred eighty (180) square feet (measuring approximately nine (9) feet by twenty (20) feet) not on a public street or alley, surfaced with an all-weather surface, enclosed or unenclosed. A public street shall not be classified as off-street parking in computing the parking requirements for any use, nor shall head-in parking adjacent to a public street and dependent upon such street for maneuvering space.

Personal services shall mean an establishment providing services of a personal nature. This classification includes barber and beauty shops, nail and tanning salons, cosmetologists, massage therapists, seamstresses, tailors, shoe repair, dry cleaners (excluding plants), self-service laundries, tattoo parlors as licensed per V.T.C.A., Health and Safety Code ch. 146, laser tattoo removal, laser hair removal, permanent makeup application, and the like.

Place shall mean an open, unoccupied space other than a street or alley permanently reserved as the principal means of access to abutting property.

Planning commission shall mean the planning and zoning commission of the city.

Private school shall mean a private school, including a parochial school, that offers a course of instruction for students in one (1) or more grades from kindergarten through grade 12, and has more than one hundred (100) students enrolled and attending courses at a single location.

Public school shall mean a public institution engaged in the education of full-time students in kindergarten through twelfth grade, including elementary schools, middle schools, junior high schools, and high schools.

Sale shall mean sales at both wholesale and retail unless specifically stated otherwise.

Servants' quarters shall mean an accessory building or portion of a main building located on the same lot as the main building and used as living quarters for servants employed on the premises and not rented or otherwise used as a separate domicile.

Short term rental shall mean a single-family, two-family, or multi-family dwelling that is rented out to the public for a period of not less than one (1) night and not more than twenty-nine (29) consecutive nights for a fee.

Story shall mean that portion of a building, other than a cellar, included between the surface of any floor and the surface of the floor next above it or, if there is no floor above it, then the space between the floor and the ceiling next above it.

Story, half, shall mean a partial story under a gable, hip or gambrel roof, the wall plates of which on at least two (2) opposite exterior walls are not more than four (4) feet above the floor of such story, except that any partial story used for residence purposes, other than by a family occupying the floor immediately below it, shall be deemed a full story.

Street shall mean a public or private thoroughfare which affords the principal means of access to abutting property.

Street line shall mean a dividing line between a lot, tract or parcel of land and a contiguous street.

Structural alterations shall mean any change in the supporting members of a structure, such as bearing walls, columns, beams or girders.

Structure shall mean anything constructed or erected, which requires location on the ground, or attached to something having a location on the ground, including but not limited to, buildings of all types, advertising signs, billboards, and poster panels, but exclusive of customary fences or boundary or retaining walls.

Trailer camp or park shall mean an area designed, arranged or used for the parking or storing of one (1) or more auto trailers which are occupied or intended for occupancy as temporary living quarters by individuals or families.

Transient shall mean a person who occupies a dwelling unit or sleeping unit for less than thirty (30) consecutive days.

[Vapor store shall mean a retail establishment that sells or offers for sale e-cigarettes, as defined by Chapter 147 of the Texas Health and Safety Code, and which receives at least eighty \(80\) percent of its gross revenues from the sale of e-cigarettes.](#)

Yard shall mean an open space at grade between a building and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided herein. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard or the depth of the rear yard, the minimum horizontal distance between the lot line and the main building shall be used.

Yard, front, shall mean a yard extending across the front of a lot between the side lot lines, and being the minimum horizontal distance between the street or place line and the main building or any projections thereof other than the projections of the usual uncovered steps, uncovered balconies, or uncovered porch. On corner lots the front yard shall be considered as parallel to the street upon which the lot has its least dimension.

Yard, rear, shall mean a yard extending across the rear of a lot and being the required minimum horizontal distance between the rear lot line and the rear of the main building or any projections thereof other than the projections of uncovered steps, unenclosed balconies or unenclosed porches. On all lots the rear yard shall be in the rear of the front yard.

Yard, side, shall mean a yard between the main building and the side line of the lot, and extending from the required front yard to the required rear yard, and being the

minimum horizontal distance between a side lot line and the side of the main buildings or any projections thereto.

Sec. 31-291. Use regulations.

A building or premises in the district "B-2" local retail district shall be less than five thousand (5,000) square feet in leasable area and used only for the following purposes:

- (1) Any use permitted in district "B-1" or "B-DC."
- (2) Appliance (household) sales.
- (3) Bakery shop (retail sales only).
- (4) Personal services establishments.
- (5) Construction field office and yard: on the job site; for duration of construction only.
- (6) Day care center.
- (7) Custom personal service shops, such as a health studio (to include massage establishments as defined in V.T.C.A., Occupations Code ch. 455, as amended), answering service, typing service, tailor, employment agency, FM piped music, income tax service, letter or mailing service, marriage counselor, secretarial service or shoe repair.
- (8) Drugstore or pharmacy.
- (9) Electric utility substation.
- (10) Florist (retail): retail sales of flowers and small plants. No flower or plant raising or outside display or storage.
- (11) Grocery store (drive-in).
- (12) Bank, savings and loan or other financial institution.
- (13) Registered public surveyor.
- (14) Restaurant, coffee shop or café (no drive-in service).
- (15) Retail stores, (other than listed): offering all types of personal consumer goods for retail sales.
- (16) Fine arts instruction, or sale of art objects.
- (17) Lodges and fraternal organizations with less than five thousand (5,000) square feet of leasable space.

(18) Drop-in care centers.

[\(19\) Cigar stores and tobacco stores, excluding vapor stores.](#)

Sec. 31-321. Use regulations.

A building or premises in the district "B-4" business district shall be used only for the following purposes:

- (1) Any use permitted in the "B-3" district.
- (2) Trailer rental and sales.
- (3) Auto sales. Where the major business is the showroom display and sale of new automobiles by an authorized dealer and used car sales, repair work and storage facilities on the same premises shall be purely incidental; provided, that the area allowed for the repair and storage of cars shall not be nearer than twenty (20) feet from the required front line of the principal building.
- (4) Auto sales. Used cars; no salvage, dismantling or wrecking on premises; no display of vehicles in required front yard; junked vehicles must be placed behind a screening device.
- (5) Commercial parking (public garage or parking lot).
- (6) Auto upholstery or muffler shop.
- (7) Auto repair (garage), with on-site junked vehicles being enclosed within a building.
- (8) Cold storage plant (locker rental).
- (9) Building material or lumber sales (no outside storage).
- (10) Cleaning, pressing and dyeing:
 - a. No direct exterior exhaust from cleaning plant permitted.
 - b. Dust must be controlled by either bag or filter and separator or precipitator so as to eliminate the exhausting of dust, odor, fumes or noise outside the plant.
- (11) Garden shop, greenhouse or nursery (retail).
- (12) Ballpark, stadium, athletic field (private).
- (13) Philanthropic institutions (not elsewhere listed).
- (14) Cabinet, upholstery, woodworking shop.

- (15) Plumbing, electrical, air conditioning service shop (no outside storage).
- (16) Trade or business school.
- (17) Garment manufacturing in a space of four thousand (4,000) square feet or less, with all loading and unloading off-street.
- (18) Halfway house.
- (19) Liquor stores to be operated under, and in accordance with, a valid Texas Alcoholic Beverage Commission issued package store permit provided that such establishment:
 - a. Complies with all applicable rules and regulations established under the Texas Alcoholic Beverage Code (TABC) and/or promulgated by the Texas Alcoholic Beverage Commission, as amended. Said rules and regulations are hereby adopted and incorporated herein for all purposes; and
 - b. Is not located within: three hundred (300) feet of a church, public or private school or public hospital; one thousand (1,000) feet of a public school if a request is submitted to city council by the board of trustees of a school district under V.T.C.A., Education Code § 38.007; or one thousand (1,000) feet of a private school if a request is submitted to city council by the governing body of the private school. The measurement of the distances shall be as provided under V.T.C.A., Alcoholic Beverage Code § 109.33 and in accordance with the procedures established by the TABC, as amended, which is hereby adopted and incorporated herein for all purposes. The city council may, however, allow a variance from this distance requirement in accordance with V.T.C.A., Alcoholic Beverage Code § 109.33(e). The following exemptions to the above-stated distance requirements and expansion of the application of the distance requirements from day-care centers and child-care facilities are provided under the TABC and are hereby adopted to provide:
 - 1. The one thousand-foot public or private school distance extension shall not apply to the holder of: a retail on-premises consumption permit or license if less than fifty (50) percent of the gross receipts for the establishment is from the sale or service of alcoholic beverages; a retail

off-premises consumption permit or license if less than fifty (50) percent of the gross receipts for the premises, excluding the sale of items subject to the motor fuels tax, is from the sale or service of alcoholic beverages; or a wholesaler's, distributor's, brewer's, distiller's and rectifier's, winery, wine bottler's or manufacturer's permit or license, or any other license or permit held by a wholesaler or manufacturer as those words are ordinarily used and understood in V.T.C.A., Alcoholic Beverage Code ch. 102.

2. The one thousand-foot private school distance extension shall not apply to the holder of: a license or permit issued under V.T.C.A., Alcoholic Beverage Code chs. 27, 31, or 72 who is operating on the premises of the private school; or a license or permit covering an establishment where minors are prohibited from entering under V.T.C.A., Alcoholic Beverage Code § 109.53 and that is located within one thousand (1,000) feet of a private school.
3. The three hundred-foot general distance prohibition shall not apply to the holder of: a license or permit who also holds a food and beverage certificate covering an establishment that is located within three hundred (300) [feet] of a private school; or a license or permit covering a premises where minors are prohibited from entering under V.T.C.A., Alcoholic Beverage Code § 109.53 and that is located within three hundred (300) feet of a private school. In this section, "private school" means a private school, including a parochial school that offers a course of instruction for students in one (1) or more grades from kindergarten through grade 12 and has more than one hundred (100) students enrolled and attending courses at a single location. In addition, the three hundred-foot general distance prohibition shall have no impact the right of a duly licensed and permitted establishment from continuing to operate if a church, public or private school or public or private hospital locates within three hundred (300) feet of the existing business establishment.

4. This subsection applies only to a permit or license holder under V.T.C.A., Alcoholic Beverage Code chs. 25, 28, 32, 69, or 74 who does not hold a food and beverage certificate. Except as provided by this subsection, the provisions of this section 31-311(2) relating to a public school also apply to a day-care center and a child-care facility as those terms are defined by V.T.C.A., Human Resources Code § 42.002. However, the one thousand-foot distance extension by request is not available to a day-care center or child-care facility. This subsection does not apply to a permit or license holder who sells alcoholic beverages if: (1) the permit or license holder and the day-care center or child-care facility are located on different stories of a multistory building; or (2) the permit or license holder and the day-care center or child-care facility are located in separate buildings and either the permit or license holder or the day-care center or child-care facility is located on the second story or higher of a multistory building. This subsection does not apply to a foster group home, foster family home, family home, agency group home, or agency home as those terms are defined by V.T.C.A., Human Resources Code § 42.002.

(20) Vapor store, provided that such establishment shall not be located within one thousand (1,000) feet of a public school, as measured in a direct line from property line to property line.

Sec. 31-394. Use regulations.

- (a) A building or premises in the historic overlay district shall allow all uses within the "B-5" business district with the following exclusions:
 - (1) Mini self-storage facilities.
 - (2) Storage warehouses.
 - (3) Tire recapping or retreading.
 - (4) Impound yards.
 - (5) Auto upholstery or muffler shop.
 - (6) Auto repair.

(7) Appliance (household) sales and services.

(8) Electric utility substation.

(9) Vapor stores.

- (b) Notwithstanding the provisions in section 31-351(3), business establishments dispensing alcoholic beverages may be located within three hundred (300) feet of a church, public or private school or public or private hospital within the Historic Overlay District (HOD).
- (c) A building or premises in the historic overlay district may be used for mixed-use development or live/work purposes, provided that the following conditions are met:
- (1) The ground floor of all mixed-use buildings shall be designated, constructed, and used only for commercial uses. Residential uses shall be permitted only on the second floor and above.
 - (2) Any structure or portion of a structure that is mixed-use or live/work shall comply with all applicable City of Killeen ordinances, including all building and residential codes.
- (d) The city council by an affirmative majority vote may by ordinance grant a conditional use permit as provided in section 31-456 of this chapter for any land use and may impose appropriate conditions and safe guards to assure that these land uses are compatible with the character of the district setting and buildings. Conditional use permits granted shall be considered permanent provided the property owner remains in continuous compliance with any conditions or safeguards imposed.

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

SECTION III. That should any section or part of any section, paragraph or clause of this ordinance be declared invalid or unconstitutional for any reason, it shall not invalidate or impair the validity, force or effect of any other section or sections or part of a section or paragraph of this ordinance.

SECTION IV. That the Code of Ordinances of the City of Killeen, Texas, as amended, shall remain in full force and effect, save and except as amended by this

ordinance.

SECTION V. That this ordinance shall take effect immediately upon passage of the ordinance.

PASSED AND APPROVED at a regular meeting of the City Council of the City of Killeen, Texas, this 9th day of April, 2024, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, §551.001 *et seq.*

APPROVED

Debbie Nash-King, MAYOR

ATTEST:

APPROVED AS TO FORM:

Laura J. Calcote, CITY SECRETARY

Holli C. Clements, CITY ATTORNEY