

**ORDINANCE NO. 102**

**AN ORDINANCE OF THE CITY OF TUSCOLA, TEXAS REPEALING AND REPLACING ORDINANCE NO. 90; ADOPTING REGULATIONS CONCERNING RESIDENTIAL BUILDINGS; INCREASING THE MINIMUM LOT SIZE REQUIREMENT; ALLOWING ACCESSORY DWELLINGS ON CERTAIN CONDITIONS; PROVIDING A PENALTY; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Tuscola (the “City”) is a Type A general law municipality operating pursuant to the laws of the State of Texas;

**WHEREAS**, the City may adopt regulate the height and size of buildings, percentage of a lot that may be occupied, the size of yards and the location and use of buildings and land for certain purposes pursuant to Section 211.003 of the Texas Local Government Code;

**WHEREAS**, the City adopted Ordinance No. 90 on November 6, 2017 which, among other things, established minimum lot size requirements and adopted regulations concerning accessory structures on property;

**WHEREAS**, City staff has recommended amending Ordinance No. 90 to increase lot sizes and allow for accessory structures to be used as dwellings, due to multiple requests for variances on these bases;

**WHEREAS**, the City Council of the City (the “City”) held a public hearing regarding increasing minimum lot size and allowing accessory dwellings on September 11, 2023, for which notice was published as required by Section 211.006 of the Local Government Code;

**WHEREAS**, the City Council finds the zoning regulations contained in this Ordinance are in compliance with the comprehensive plan and are designed to promote health and the general welfare prevent the overcrowding of land, avoid undue concentration of population, and facilitate the adequate provision of public services.

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TUSCOLA, TEXAS THAT** the following provisions are hereby enacted as the Residential Building Requirements for Single Family Dwellings Ordinance of the City of Tuscola, Texas:

**Section 1. Scope.**

It is not the intent of this Ordinance to repeal, abrogate, annul, or in any way impair or interfere with existing provisions or other laws or ordinances, except as the same may be specifically repealed by the terms of this Ordinance, or with private restrictions placed upon property by covenants, deed easements or other private agreements. The Civic and Homeowner Associations can provide information concerning applicable deed restrictions. Where the conditions imposed by any provision of this Ordinance are either more or less restrictive than comparable conditions imposed by another

ordinance, rule or regulation of the City or private agreement, the ordinance, rule, or regulation which imposed the most restrictive condition, standard or requirement shall prevail.

**Section 2. General.**

Single-family dwelling: A property survey or an accurate, detailed site plan must be submitted in conjunction with all building and subdivision applications for new structures and/or additions to existing structures.

Minimum lot size: 10,000 square feet\*

Minimum lot width: 50 feet\*

Maximum lot coverage: 50 %

\*Exceptions to minimum lot size and width requirements may be made for pre-platted lots or tracts. Yard setback(s) and lot coverage regulations still apply.

**Section 3. Minimum Yard/Setback Requirements.**

For construction in pre-existing neighborhoods, setbacks shall conform to established average lines. For new developments and subdivisions the following shall apply:

Primary Structures:	Front Yard	25 feet
	Rear Yard	15 feet
	Side Yard	5 feet
	Side Yard Adjacent to Public Right-of-Way	10 feet*
	Easements	3 feet from any utility easement in a rear yard*

\*No portion of any building, including projections of any nature, shall encroach into any utility easement or vertical projection of the easement boundary.

**Section 4. General Accessory Structure Requirements.**

(a) Garage requirement: Every single-family dwelling unit hereafter erected shall be so located on the lot so a garage, either attached or detached, can be located and accessed on said lot.

(b) It is permissible to have both an attached and detached garage located or erected on your property, provided you do not exceed the MAXIMUM allowable building area as per the building code and city ordinances.

(c) Detached garages.

- (1) May be located in rear yards or a side yard that does not abut a street right-of-way.
- (2) Maximum of one (1) detached garage per dwelling.
- (3) Maximum height of 20 feet or the height of the principal structure, whichever is less.

- (4) Setbacks:
  - (A) Side yard: 5 feet
  - (B) Side yard adjacent to public right-of-way: 10 feet
  - (C) Rear yard: 3 feet
  - (D) Easements: May abut; no encroachment
  - (E) From structures on same lot: 6 feet

(d) Carports. A roofed structure, free-standing or attached to another structure designed to provide covered parking for vehicles. The following rules shall apply:

- (1) It shall not have enclosing walls and be located directly over a driveway.
- (2) Front and side yard carports are permitted.
- (3) Maximum of one (1) detached carport structure per dwelling.
- (4) Setbacks:
  - (A) Front or side property line: 5 feet
  - (B) Corner lots: 25 feet from an intersection (distance is measured from intersection property lines common with street right-of-way lines)

(e) Unenclosed patio covers attached to primary structure.

- (1) Setbacks:
  - (A) Side yard: 5 feet
  - (B) Rear yard: 3 feet
  - (C) Rear utility easement: Patio and cover may be located adjacent to a rear yard easement; however, no portion may encroach into said easement.
- (2) Maximum Height Requirements: Single-family, detached – 35 feet

(f) Driveways.

- (1) Shall be constructed of an appropriate durable material (concrete, asphalt, compacted base, etc.). Shall be installed prior to house being occupied.
- (2) Minimum width: 12 feet

- (3) Minimum distances:
  - (A) Between drives: 10 feet
  - (B) From side property line(s): 3 feet
  - (C) From intersection: 25 feet (distance is measured from intersection of property lines common with street right-of-way lines).

(g) Other Accessory Structures:

- (1) May be located in a rear yard.
- (2) Maximum height of 15 feet.
- (3) Not closer than 3 feet to any adjacent structures.
- (4) If not exceeding 120 square feet and is mounted on a skid foundation, the building may be located within a utility easement, but not closer than 3 feet to a side or rear property line and not closer than 3 feet to any adjacent structure.
- (5) Buildings over 120 square feet shall be located 3 feet from side and rear property lines and no portion may encroach into a utility easement, and not closer than 3 feet to any adjacent structure.

(h) Terraces, Decks, Patios, and Sidewalks. If unenclosed and not over 1 foot over average exterior grade:

- (1) May be located in any yard.
- (2) Minimum 2 feet setback from any property line.
- (3) May abut, but not encroach on utility easements.

(i) Fences.

- (1) Barbed wire fences shall not be permitted, used or constructed except in industrial applications above chain link (6 feet above ground minimum) or to control livestock.
- (2) Electric fences are permitted only for single family dwellings and for the purpose of erecting an enclosure to restraint the movement of dogs and/or livestock.
- (3) Within side and rear yards, fences not higher than 8 feet.
- (4) Both sides of a fence shall be maintained in good condition by the owner(s) of the fence and grass/ground cover adjoining the fence must be mowed and the weeds removed on a regular basis.

(5) Allowable fencing materials include: wood pickets, wrought iron, chain link, vinyl, masonry, pipe, corrugated metal panels. Any other proposed material for fencing requires prior approval by the City Administrator. Materials to be unloaded on private property, not in right-of-way.

## **Section 5. Accessory Dwellings.**

(a) Definition. An accessory dwelling is a subordinate building that is detached from the primary on-site structure, is used as a residence, is incidental to the main structure (i.e., the building area must be significantly less than that of the main structure), and is not used for commercial purposes.

(b) Allowed with permit. Accessory dwellings are permitted in residential areas with a special use permit, provided all of the requirements established in this Section 5 are met.

(c) Specific use permit.

(1) Application. An application for specific use permit shall be submitted by the owner or an agent authorized by affidavit to act on the owner's behalf. A complete application shall be submitted to the City Administrator, along with a fee in the amount of \$200.00. The application must include a site plan showing existing and proposed development of the affected site and a written statement describing how the proposed accessory dwelling meets the specific use permit eligibility as set forth in Section 5(d). After determining that the application is complete, the City Administrator shall place the request on a meeting agenda for consideration by the City Council.

(2) Notice of hearing.

(A) At least sixteen (16) days before the date of the hearing, notice of the hearing shall be published in a newspaper of general circulation within the City.

(B) At least ten (10) days before the hearing before the City Council, the City Administrator shall provide written notice of the hearing to each owner, as indicated in the most recently approved tax roll of the City, of real property within two hundred (200) feet of the property for which the specific use permit is requested.

(3) Hearing before City Council. At the public hearing, the City Council shall consider the application, any pertinent comments by City staff, relevant support materials, and public testimony given at the public hearing. After the close of the public hearing, the City Council may approve the request, approve the request with additional conditions, or deny the request. The City Council may attach such conditions to a specific use approval as are necessary to prevent or minimize adverse effects on other property in the neighborhood, including, but not limited to: limitations on size, bulk, and location; provision of adequate ingress and egress; duration of conditional use approval; and hours of operation for the specific allowed activity, in addition to the requirements imposed in Section 5(d).

(4) Specific Use Approval Criteria. Approval of a special use by the City Council shall be based upon the following criteria:

(A) *Impacts Minimized.* Whether and the extent to which the site plan minimizes adverse effects, including adverse visual impacts, on adjacent properties.

(B) *Compatible with Surrounding Area.* Whether and the extent to which the proposed specific use is compatible with existing and anticipated uses surrounding the subject land.

(C) *Traffic Circulation.* Whether and the extent to which the proposed specific use is likely to result in extraordinarily prolonged or recurrent congestion of surrounding streets, especially minor residential streets.

(D) *Community Need.* Whether and the extent to which the proposed specific use addresses a demonstrated community need.

(E) *Development Patterns.* Whether and the extent to which the proposed specific use would result in a logical and orderly pattern of urban development in the community.

(5) Inspection; Issuance of Permit. If the City Council determines that the request for a specific use permit should be granted, it shall issue a written permit imposing any conditions required by the Council, and allow for the applicant to proceed with construction or placement of the accessory dwelling. Before the accessory dwelling is occupied, the City shall inspect, or cause to be inspected, the dwelling to confirm it complies with the terms of the permit itself and the terms of this Ordinance. The owner of record shall be responsible for all costs related to the inspection of the dwelling.

(6) Duration of specific use permit.

(1) A specific use permit shall expire one (1) year from the date of issuance if the applicant does not obtain a building permit for the construction of the approved dwelling within that time frame.

(2) A specific use permit shall not be transferrable to subsequent owners of the affected property and shall deem to have expired upon the sale of the property.

(3) A specific use permit shall be revoked if the inspection shows that the dwelling is no longer in compliance with this Ordinance or the building codes or other ordinances of the City.

(d) Accessory dwelling requirements.

(1) An accessory dwelling shall not be larger than fifty percent (50%) of the primary structure on the property.

(2) Only one (1) accessory dwelling is permitted per lot.

(3) An accessory dwelling shall have a minimum of one (1) bathroom, including a water closet, lavatory, and a bathtub or shower.

- (4) An accessory dwelling must have a kitchen area for the proper preparation and cooking of food. Each kitchen shall have a sink.
- (5) An accessory dwelling must have at least two (2) doors in case of a fire.
- (6) An accessory dwelling unit shall be constructed only with the issuance of a building permit and in compliance with the City's building codes and ordinances.
- (7) Any wall of the accessory dwelling must be placed no closer than six feet (6') from the primary dwelling and/or any other structure existing or under construction on the same lot.
- (8) An accessory dwelling must have operable windows located in whole or in part within six feet (6') above ground level or a walking surface below that provide access to the dwelling.

**Section 6. Penalty.**

(a) Any person who shall violate any of the provisions of this Ordinance or who shall fail to comply therewith or with any of the requirements thereof shall for each and every violation or noncompliance be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine up to \$2,000.00. Each day shall violation be permitted to exist shall constitute a separate offense.

(b) In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of the general law or of the terms of this Ordinance, the City, in addition to imposing the penalties above provided, may institute any appropriate action or proceedings in court to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, or to prevent the occupancy of such building, structure or land, or to prevent any illegal act, conduct, business or use, in or about such land; and the definition of any violation of the terms of this Ordinance as a misdemeanor, shall not preclude the City from invoking the civil remedies given it by law in such cases, but same shall be cumulative or and in addition to the penalties prescribed for such violation.

**Section 7. Repeal.** Ordinance # 90, adopted on November 6, 2017, is hereby repealed. Any other prior ordinance or ordinance provision, as may be applicable, is hereby repealed to the extent that such ordinance or provision of an ordinance conflicts or contradicts the amendments and provisions enacted herein.

**Section 8. Severability.** Should any section or part of this Ordinance be held unconstitutional, illegal, or invalid, or the application to any person or circumstances for any reasons thereof ineffective or inapplicable, such unconstitutionality, illegality, or ineffectiveness or such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof, but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this ordinance are declared to be severable.

**Section 9. Effective Date.** This Ordinance shall take effect and be in full force and effect from and after the date of its passage and publication of the caption and penalty clauses of the Ordinance in a newspaper of general circulation within the City, as required by law.

PASSED, APPROVED and ADOPTED this the 11<sup>th</sup> day of September, 2023.