

Proposed Smart Code Changes

Board of Aldermen Public Hearing: September 6, 2011

As Recommended by the Planning Commission after the July 20th and August 17th Public Hearings

1. Correct Various Typographical Errors
2. *Add section 2.11: ~~Use~~ of sectors as zones in existing community maps.”*
3. *Add section 3.2.3: ~~Use~~ of sector zones O1, O2, G1, G2 and G3 shall not be permitted within a new community plan”*
4. *Add section 4.2.3: ~~In~~fill community plans may utilize sector zones O1, O2, G1, G2 and G3 where necessary to accommodate larger undeveloped areas which never the less must be zoned”*
5. *Add section 4.3.5: ~~Res~~idual areas outside other community types may be designated as part of a sector zone to facilitate later appropriate planning or development.”*
6. *Change Section 5.3.2B to include: ~~Minor~~ Encroachments may encroach the side-setback if necessary to meet International Building Code and other mandatory safety code requirements.”*
7. *Change Section 5.4.2B to include: ~~Minor~~ Encroachments may encroach the side-setback if necessary to meet International Building Code and other mandatory safety code requirements.”*
8. *Change Section 5.5.2B to include: ~~Minor~~ Encroachments may encroach the side-setback if necessary to meet International Building Code and other mandatory safety code requirements.”*
9. *Change Section 8E.2.2B to include: Minor Encroachments may encroach the side-setback if necessary to meet International Building Code and other mandatory safety code requirements.”*
10. *Change Section 8E.3.2B to include: Minor Encroachments may encroach the side-setback if necessary to meet International Building Code and other mandatory safety code requirements.”*
11. *Change Section 8E.4.2B to include: Minor Encroachments may encroach the side-setback if necessary to meet International Building Code and other mandatory safety code requirements.”*
12. *Change Section 8E.5.2B to include: Minor Encroachments may encroach the side-setback if necessary to meet International Building Code and other mandatory safety code requirements.”*
13. *Change Section 8.E.6.2B to include: Minor Encroachments may encroach the side-setback if necessary to meet International Building Code and other mandatory safety code requirements.”*

14. *Change Section 5.3.4 F to include:* “Access to under house parking shall be permitted through a façade wall for lots less than 50 feet in width, where no reasonable alternative exists.”
15. *Change Section 5.4.4F to include:* ~~–~~Parking under elevated structures within the Second Layer shall be permitted under the condition that it is screened from the Frontage, with access permitted through a façade wall.”
16. *Amend Section 5.3.5 K to read:* ~~–~~Fences, if provided along a primary or secondary Frontage Line shall be of wood, wrought iron or materials substantially resembling wrought iron. Fences located within or along the first layer shall be of wood board or metal, and shall be at least 75% visually open above 42 inches above grade. On corner lots, fences within the minimum setback of a Frontage Line shall be at least 50% visually open above 18 inches above street grade and at least 75% visually open above 36 inches above street grade. Fences shall not in any case exceed 8 feet height.”
17. *Amend Section 5.4.5K to read:* ~~–~~Fences, if provided along a primary or secondary Frontage Line shall be of wood, wrought iron or materials substantially resembling wrought iron. Fences located within or along the first layer shall be of wood board or metal, and shall be at least 75% visually open above 42 inches above grade. On corner lots, fences within the minimum setback of a Frontage Line shall be at least 50% visually open above 18 inches above street grade and at least 75% visually open above 36 inches above street grade. Fences shall not in any case exceed 8 feet height.”
18. *Amend Section 5.3.11a (table) to read:*
 1. “ Lot Occupation, b.Lot Coverage: 40%”
 2. ~~–~~Building Type, b. Sideyard: by Warrant”
19. *Amend Section 5.3.11b (table) to read:*
 1. ~~–~~Building Function, b. Lodging: Prohibited”
20. *Amend Section 5.4.11a (table) to read:*
 1. ~~–~~Building Type, c. Rearyard: by Warrant”
 2. ~~–~~Building Type, d. Courtyard: by Warrant”
21. *Amend Table 10: Specific Functions to include the following changes:*
 1. *Delete Zone T3V Building Functions because building functions are identical to those of T3E except that Multi Family Estate is permitted by right*
 2. *Delete d. Retail: Liquor Selling Establishment, in all transects.*
 3. *Amend T2 a. Residential: Single Family House- By Right*
 4. *Amend T2 a. Residential: Estate House- By Right*
 5. *Amend T2 a. Residential: Multi Family Estate- Prohibited*
 6. *Amend T2 a. Residential: Manufactured House- Prohibited*
 7. *Amend T2 a. Residential: Temporary Tent- Prohibited*
 8. *Amend T2 f. Other, Education: Childcare Center- PCA*
 9. *Amend T3E a. Residential: Manufactured House- Prohibited*
 10. *Amend T3E a. Residential: Temporary Tent- Prohibited*
 11. *Amend T3E c. Office: Live-Work Unit- PCA*
 12. *Amend T3E b. Lodging: Inn (up to 12 rooms)- Prohibited*
 13. *Amend T3E b. Lodging: Bed & Breakfast (up to 5 rooms) –Prohibited*

14. *Amend T3E d. Retail:* Open Market Building- Prohibited
15. *Amend T3E e. Civic:* Religious Assembly- Prohibited
16. *Amend T3E f. Agricultural:* Greenhouse- Ancillary Use
17. *Amend T3E f. Agricultural:* Stable- Ancillary Use
18. *Amend T3E f. Agricultural:* Kennel- Ancillary Use
19. *Amend T3E f. Education:* Elementary School- Prohibited
20. *Amend T3E f. Education:* Childcare Center- Prohibited
21. *Amend T3R a. Residential:* Manufactured House- Prohibited
22. *Amend T3R a. Residential:* Temporary tent- Prohibited
23. *Amend T3R c. Office:* Live-Work Unit- PCA
24. *Amend T3R d. Retail:* Open Market Building- Prohibited
25. *Amend T3R f. Agriculture:* Greenhouse- Ancillary Use
26. *Amend T3R f. Agriculture:* Stable- Ancillary Use
27. *Amend T3R f. Agriculture:* Kennel- Ancillary Use
28. *Amend T3R f. Education:* Childcare Center- PCA
29. *Amend T4L b. Lodging:* S.R.O. hostel- Prohibited
30. *Amend T4+ b. Lodging:* S.R.O. hostel- Prohibited
31. *Amend T5 b. Lodging:* S.R.O. hostel—Prohibited
32. *Amend T5 f. Automotive:* Automobile Service—PCA
33. *Amend T5 f. Automotive:* Automobile Service—PCA
34. *Amend T4+ f. Automotive:* Truck Maintenance—PCA
35. *Amend T5 f. Automotive:* Truck Maintenance—PCA

22. *Amend Table 14 G-M to include the following changes:*

1. *Amend T2 I. Building Setback:* Side Setback 20 ft minimum
2. *Amend T3R J. Building Type:* Sideyard House- By Warrant
3. *Amend T4L J. Building Type:* Rearyard by warrant
4. *Amend T4L J. Building Type:* Courtyard by Warrant
5. *Create text under T3 M Building Function:* Lodging* (*Lodging Restrictions vary, see tables 5.3.11a, 5.3.11b, and 5.3.11c.

23. Definitions Section-

1. **Add Dwelling:** Residence of a single housekeeping unit.
2. **Add Encroachment:** Any structural element that breaks the plane of a vertical or horizontal regulatory limit, extending into a setback, into the Public Frontage, or above height limit.
3. **Add Shed:** A simple roofed structure used as a storage space or a workshop
4. **Add Bed & Breakfast:** an owner-occupied Lodging type offering 1 to 5 bedrooms, permitted to serve breakfast in the mornings to guests.
5. **Add Inn:** a Lodging type, owner-occupied, offering 6 to 12 bedrooms, permitted to serve breakfast in the mornings to guests.
6. **Amend Outbuilding** to read: an accessory building, usually located towards the rear of the same lot as the Principal Building. It is sometimes connected to the principal building by a Backbuilding. Outbuildings shall have a maximum square footage not greater than the larger of 750 square feet or 40% of the Enclosed Habitable Floor space of the Principal

Building on the lot, exclusive of parking areas, but in no event shall it exceed 1200 square feet. Maximum square footage may be adjusted by Variance.

7. *Amend Ancillary Dwelling Unit (ADU) to read:* an apartment not greater than the larger of 750 square feet or 40% ,of the Enclosed Habitable Floor Space of the primary residence on the lot, but in no event shall it exceed 1200 square feet, which shares the ownership and utility connections with a Principal Building. An Ancillary Unit may or may not be within an Outbuilding. Entry to an ADU which is attached to the Principal Building shall not be visible from the Frontage Line. Under Restricted Residential Function (single family) the owner of the property must occupy either the ADU or the principal dwelling. Ancillary Units do not count toward maximum density calculations. Maximum square footage may be adjusted by Variance.

24. Add/Edit Following Language in Section 1.8, Pre-Existing Conditions.

1.8 Pre-Existing Conditions

1.8.1 Generally

- a) Definition: A nonconformity as used in the Code is an existing Use, Structure, Lot or site improvement that is in compliance with the zoning regulations that were applicable to it when it was established, and for which all required permits were issued, but which does not conform in whole or in part to the regulations of this Code. Such nonconformity is legal and may continue except as regulated by this section.
 - i. A nonconformity may also be created where the lawful use of eminent domain or an order of a court competent jurisdiction has affected the lawfully existing Use, Structure, Lot or site improvement in a way so that the property does not comply with this Code. In this instance, the nonconformity is legal and may continue except as regulated by this section.
 - ii. A change in tenancy, ownership, or management of a nonconforming Use, Structure, Lot or site improvement shall not be construed to create a nonconformity, provided the change is otherwise lawful and in compliance with this Code.
- b) *Intent concerning nonconformities generally*
- c) The existence of nonconformity shall not be used as a reason to add new Uses, Structures, or site improvements that are not allowed by the regulations of the Transect Zone in which it is located.
- d) The temporary or illegal Use of property shall not be sufficient to establish existence of nonconformity or to create rights in the continuation of nonconformity until it shall come into compliance with the regulations of this Code.
- e) If at any time a nonconforming Structure, or any Structure containing a nonconforming Use, becomes unsafe or unlawful by declaration of the City of Pass Christian, Harrison County, or other government agency having jurisdiction, the Structure shall not thereafter be restored or repaired and the Use shall not be reestablished except in conformity with the regulations of the Transect Zone in which it is located.

1.8.2. Alterations and Expansion of Nonconforming Structures

- a) Single-Family Residences and Duplexes

- i. Interior alterations to a nonconforming single-family Residence or duplex for interior work such as repairs, maintenance, modernization or interior remodeling shall be allowed
 - ii. Alterations, additions, repairs, modernization and maintenance to a nonconforming Single-Family Residence or duplex shall be permitted as long as there is no enlargement of any nonconformity that affects the exterior of the Building or premises
 - iii. Where the alteration, addition, repair, modernization, or maintenance enlarges a nonconformity affecting the exterior of the Building or premises, the enlargement may be permitted by Variance granted by the appropriate Commission or Board that has jurisdiction over the matter.
- b) *Expansion, repairs, remodeling, modernization, and maintenance that do not enlarge the nonconformity of a nonconforming Structure.* All expansions, repairs, remodeling and maintenance that do not enlarge the nonconformity of the Structure are permitted consistent with the International Building Code or International Residential Code.

1.8.3 Moving a Nonconforming Structure on the Same Lot

- a) A nonconforming Structure may be moved to another location on the same Lot only pursuant to a Variance. In addition to satisfying the Variance Criteria, the following criteria apply:
 - i. The proposed movement must reduce the degree of nonconformity to the maximum extent reasonable feasible, or eliminate the nonconformity.
 - ii. The Structure shall in no case be moved in such a manner as to increase the degree of nonconformity; and
 - iii. Where a nonconforming Structure is moved to a location not on the same Lot, the Structure and all new construction shall thereafter conform to the regulations for the Transect Zone to which it is moved.

1.8.4 Nonconforming Uses

a) *Time Limitation:* Where, at the effective date of adoption or amendment of this Code, a lawful Use of land or a structure exists which would not be permitted under this Code, such Use will be allowed to continue. If the nonconforming Use of the land or structure ceases or is discontinued for a period in excess of one (1) year before either a permit is granted and reconstruction or repair commences or the use is resumed, the nonconforming use shall be forfeited or abandoned and the subsequent use shall be fully compliant with this code. (Note: as used herein the word “discontinued” means that the owner or party responsible for the use of the property cannot demonstrate that he had clear intent to continue using the property for the non-conforming purpose and that he had augmented that intent by making every reasonable effort to continue to have the property so used. A demonstration of intent would be reasonable continuous effort to have the property rented or sold for the non-conforming, purpose.) A nonconforming use may also be forfeited by the intentional use of the land or structure for a conforming use for a period of six months or the destruction or substantial damage to a structure to the extent of more than eighty percent of the replacement cost at the time of the event. Provided, however, the time period shall not include any time during which the discontinuance is caused by governmental action which impedes access to the premises.

- b) *Replacement and Expansion of Structures that Contain Nonconforming Use:* No enlargement, extension, replacement, repair, modernization, or reconstruction of an

existing Structure which contains a nonconforming Use shall be permitted except to change the Use to a conforming use or with Planning Commission Approval.

- c) *Extending/ Transferring the Nonconforming Use:* No nonconforming Use shall be extended to occupy any other Structure on the same Lot or parcel if the other Structure was not used for the nonconforming Use at the time the Use became nonconforming.
- d) *Subdivision or structural additions:* Structures used for nonconforming Uses shall not be subdivided, nor shall any structures be added on the premises, except for conforming Uses and Structures.

1.8.5 Nonconforming Lots

- a) A nonconforming lot may continue and may be used as provided by this section. A nonconforming Lot is one shown on the latest recorded plat or described by deed, both as recorded in the public records of Harrison County, which met the width, length and area requirements in effect when the Lot became of record, and which Lot would not conform to the requirements of this Code.
- b) When a Lot has become nonconforming due to a street or alley vacation or closure, the Lot may be modified pursuant to an approval by the Planning Department as long as the degree of nonconformity created by the vacation or closure is not increased.
- c) Rules concerning combinations of contiguous nonconforming Lots in the same ownership and with common Frontage for T3 Transects only.
 - i. Combinations Required:
 - 1. If two or more Lots, or combinations of Lots and portion of Lots, with continuous Frontage in the same ownership exist at the time of passage or amendment of this Code, and if all or part of the Lots do not meet the requirements for Lot width and area, the lands involved shall be considered an “undivided parcel” for the purposes of this Code. Except as provided below in paragraph C.2., no portion of an undivided parcel shall be used or sold in a manner diminishing compliance with general Transect requirements for Lot width and area.
 - 2. The undivided parcel shall be considered one Lot for which only one Single-Family Residence or duplex may be constructed, regardless of how many nonconforming Lots make up the parcel.
 - 3. A unity of title, or covenant in lieu of unity of title, which complies with all applicable requirements of the City Code shall be required on all undivided parcels prior to the issuance of any building permits, including demolition permits.
 - ii. Exceptions to the combination requirement: Notwithstanding paragraph C.1, where nonconforming Lots with continuous Frontage in the same ownership exist at the time of passage or amendment of this Code, such Lots may be developed individually, in accordance with the applicable code requirements and pursuant to a Variance, if such Lots individually comply with any of the following exceptions.
 - 1. Duplex Lots restricted to Single-Family Residences. The owner of two or more adjoining nonconforming duplex Lots must by covenant (in a form acceptable to the City Attorney) restrict the Use of the Lots to the development of no more than one Single-

Family Residence per Lot and must comply with all SmartCode requirements except for the minimum Lot width.

2. The ninety percent (90%) rule. The Lots must individually comply with ninety percent (90%) of the requirements for Lot width, area, and Principal Front Setback under the SmartCode regulations.
3. The one thousand (1,000) feet radius rule. The width or size of such nonconforming Lots must be equal to or larger than the majority of the existing Building sites within the same Transect Zones and either within a minimum one thousand (1,000) foot radius of the nonconforming Lot perimeter, or extending no further than the immediate vicinity, whichever is less. "Building site" shall mean a Lot, group of Lots or parcel upon which a Single-Family Residence or duplex is located. "Immediate vicinity" shall mean either an area in which a parcel of land is located that is physically, functionally or geographically identifiable as a distinct realm, place or neighborhood, or an area within a radius of one-half mile from the nonconforming Lot, whichever is smaller.

1.8.6 Nonconforming Site Improvements

- a) Where nonconforming site improvements exist, such as Off-Street Parking and loading, access, fences, walls, lighting, landscaping, or similar site improvements, such nonconformities will continue and the site improvements may be altered only as provided below:
 - i. No change shall be made in any nonconforming site improvement which increases the nonconformity. Changes may be approved by Warrant, if appropriate, and if the changes result in the same or a reduced degree of nonconformity.
 - ii. Where existing Off-Street Parking facilities are nonconforming to the requirements of this Code or any other city standards, the restoration, modernization or rehabilitation of an existing Building or adaptive Use to any permitted Use in the Transect Zone shall not require the provision of additional parking except to the extent required by applicable state or federal law. No modifications may be permitted which substantially increase the degree of the existing nonconformity. Modification to the facilities may be approved by Warrant, if appropriate, and the Warrant may be conditioned on safeguards that reduce the degree of nonconformity to the extent reasonably feasible in the circumstances of the case.

25. Add Outbuilding Policy Section 5.14

5.14. Outbuilding Policy

5.14.1 Non-dwelling outbuildings on parcels without a primary building. A non-dwelling outbuilding on a parcel without a primary building can be placed on a parcel without a primary structure under the following conditions:

- a) No outbuilding on an otherwise vacant lot may have electrical, water or sewer connected.

- b) Any outbuilding erected on a parcel with no primary building is required to have a building permit and a conditional use permit issued by the Planning Commission, and must meet all applicable Flood and building code regulations.
- c) Any such outbuilding shall meet the setback requirements of the city's zoning ordinance, with sufficient room permitted in the judgment of the Planning Office for a future primary building
- d) The owner of the vacant lot shall sign an agreement to maintain the outbuilding and the vacant lot in an acceptable fashion, not allowing vegetation to grow to a height of more than 18", nor allow trash, vehicles, boats, etc. to accumulate on the vacant property. Failure to maintain these standards and to expeditiously rectify violations upon notification by the City of Pass Christian shall result in the loss of the conditional use and the requirement to have the lot cleaned and the outbuilding removed. Once the conditional use permit has been lost the owner loses the right to re-apply for a similar permit in the future.

5.14.2 Outbuilding which is an Ancillary Dwelling Unit on parcels without a primary building. An Outbuilding which is an Ancillary Dwelling Unit may be placed on a parcel with no primary building under the following conditions:

- a) Any outbuilding which is an Ancillary Dwelling Unit erected on a parcel with no primary building is required to have a building permit and must meet all applicable Flood and building code regulations.
- b) Planning Commission approves granting of permit for construction of an outbuilding before primary.
- c) Owner signs agreement with city to secure and maintain in good standing a permit for construction of a code-compliant primary building within 24 months once the Certificate of Occupancy is issued, and acknowledging that failure to comply will result in revocation of occupancy permit, deactivation of utilities, and requirement for removal of the outbuilding.
- d) Any outbuilding which in an Ancillary Dwelling Unit erected on a parcel with no primary building shall have a maximum square footage not greater than the larger of 750 square feet or 40% of the Enclosed Habitable Floor Apace of the proposed primary residence, but in no event shall it exceed 1200 square feet.

5.14.3 Outbuildings on parcels with existing buildings

- a) Any outbuilding erected or placed on a parcel is required to have a building permit and to meet all flood code, building code, and zoning code requirements, except
- b) Any outbuilding which is less than 240 square feet in footprint and less than 12 feet maximum height above adjacent grade will be exempted from architectural standards of the SmartCode, so long as the building is placed in the third layer within 25 feet of the primary building with no façade walls visible from any enfronting street.