

ORDINANCE NO. 5362

AN ORDINANCE OF THE CITY OF DENISON, TEXAS, PROVIDING FOR SPECIFIED CHANGES IN THE OFFICIAL ZONING MAP OF THE CITY OF DENISON, TEXAS; PROVIDING FOR A CONDITIONAL USE PERMIT FOR A BAR IN THE LOCAL RETAIL DISTRICT WITHIN THE COMMERCIAL HISTORIC OVERLAY AND AUSTIN AVENUE OVERLAY ON THE PROPERTY DESCRIBED IN EXHIBIT A, BEING APPROXIMATELY 0.4683 ACRES, AND BEING LEGALLY DESCRIBED AS LOT 1 AND LOT 2, BLOCK 38, ORIGINAL TOWN PLAT, DENISON, GRAYSON COUNTY, TEXAS, AND COMMONLY KNOWN AS 221 N AUSTIN AVENUE, CITY OF DENISON, GRAYSON COUNTY, TEXAS; PROVIDING A PENALTY CLAUSE; PROVIDING REPEALER, SEVERABILITY AND SAVINGS CLAUSES; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

WHEREAS, the City of Denison, Texas (hereinafter referred to as “City”) is a Home Rule Municipality acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, the City Council of the City (the “City Council”) adopted Chapter 28 of its Code of Ordinances, the same being the Comprehensive Zoning Ordinance of the City, which governs the use and development of land in the City (the “Zoning Ordinance”); and

WHEREAS, Chapman, Inc. (“Owner”) owns Lot 1 and Lot 2, Block 38, Original Town Plat, Denison, Grayson County, Texas, and commonly known as 221 N. Austin Avenue, City of Denison, Grayson County, Texas, as described and depicted in **Exhibit “A”**, which is attached and incorporated as if fully set forth herein (the “Property”), and has made an application under the provisions of the Zoning Ordinance requesting a Conditional Use Permit for a Bar as depicted by Site Plan in **Exhibit “B”**, which is attached and incorporated as if fully set forth herein (the “Site Plan”), on the Property which is located in the Local Retail District within the Commercial Historic Overlay and Austin Avenue Overlay; and

WHEREAS, Owner has designated Kristen Dunkerton and Heather LaRosa of SLUSH Premium Daquiris to act in the capacity of Owner as agent for submittal, processing, representation, and/or presentation of the application, and as the principal contact person for responding to all requests for information; and

WHEREAS, the Comprehensive Zoning Ordinance of the City allows for a Bar in the Local Retail District within the Commercial Historic Overlay and Austin Avenue Overlay with the grant of a Conditional Use Permit; and

WHEREAS, public hearings on said application having been held before the Planning and Zoning Commission and the City Council of the City of Denison (the “City Council”), after due notice of the public hearings having been mailed and published in all respects as required by law on the property fully described in the body of this Ordinance; and

WHEREAS, the Planning and Zoning Commission has recommended approval of a Conditional Use Permit for a Bar for the Property; and

WHEREAS, the City Council has considered the evidence and testimony provided by all parties appearing before the City Council, in person and in writing, and the recommendation of the Planning and Zoning Commission relative to the proposed zoning change and has further considered all written approvals and protests, all as required by law; and

WHEREAS, the City Council has determined that the uses requested for the Property as requested in the Conditional Use Permit application and subject to the provisions of this Ordinance are compatible with surrounding properties and are appropriate for the location of the Property.

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

Section 1. Incorporation of Premises. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. Zoning Map and Conditional Use Permit Approved. The zoning map of the City of Denison adopted by Section 28.3 of the Denison Code of Ordinances and on file in the office of the Planning Director is hereby amended to reflect the Conditional Use Permit is approved in the Local Retail District within the Commercial Historic Overlay and Austin Avenue Overlay on the Property as follows:

2.01. Permit Granted. A Conditional Use Permit (“CUP” or “Permit”) for the Property authorizing use of the Bar, is hereby approved.

2.02. Permit Conditions. The CUP and the use for which it is granted is subject to all Applicable Regulations (defined below) and to the following conditions:

A. Uses. The following use shall be permitted in accordance with the conditions of the CUP:

Bar: An establishment primarily devoted (seventy-five (75) percent) to the serving of alcoholic beverages for on-premises consumption and in which the service of food is only incidental to the consumption of such beverages.

B. Applicable Regulations. In addition to the specific requirements set forth in this Ordinance, this CUP shall be subject to all ordinances and regulations of the City applicable to the Property, including without limitation the Comprehensive Zoning Ordinance and those regulations governing the Local Retail District, Commercial Historic Overlay and Austin Avenue Overlay (“Applicable Regulations”). The CUP granted by this Ordinance shall control in cases of conflict between this Ordinance and/or the Comprehensive Zoning Ordinance.

Section 3. Failure to Comply/Expiration/Transferable. All terms of this CUP shall be complied with prior to issuance of a certificate of occupancy. This CUP shall be declared null and void and of no force and effect and shall discontinue if or for any one or more of the following:

- A. Any failure to comply with any term or condition of this Ordinance or the applicable regulations, as they exist or may be amended; or
- B. Any improvements, the Property, uses or structures regulated by this CUP are enlarged, modified, structurally altered or otherwise significantly changed unless a separate conditional use permit or other required authorization is granted therefor; or
- C. A building permit for the construction of any new structure for which a use is authorized hereunder has not been approved within one (1) year of the date of approval of this Ordinance; or
- D. A certificate of occupancy for any existing structure for which a use authorized by this Ordinance is not applied for and issued within one hundred and eighty (180) days from the effective date of this Ordinance; or
- E. A use for which this CUP is granted ceases to operate for a continuous period of one hundred eighty (180) calendar days; or
- F. A structure for which this CUP is granted remains vacant for a continuous period of one hundred eighty (180) calendar days; or
- G. This CUP was obtained by fraud or deception; or
- H. As otherwise permitted by law, this Ordinance and/or the City's Zoning Ordinance, as they exist or may be amended, including without limitation the requirements of Section 28.9 "Nonconforming Uses and Structures".

Section 4. Savings/Repealing Clause. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

Section 5. Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Denison hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences clauses and phrases be declared unconstitutional or invalid.

Section 6. Penalty. Any person, firm, entity or corporation who violates any provision of this Ordinance or Denison's Zoning Ordinance Chapter 28, as they exist or may be amended, shall be deemed guilty of a misdemeanor, and upon conviction therefore, shall be fined in a sum not

exceeding Two Thousand and No/100 Dollars (\$2,000.00). Each continuing day's violation shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude Denison from filing suit to enjoin the violation. Denison retains all legal rights and remedies available to it pursuant to local, state, and federal law.

Section 7. Publication and Effective Date. This Ordinance shall become effective immediately upon its adoption and its publication as required by law.

AND IT IS SO ORDERED.

On motion by Council Member Thomas, seconded by Council Member Massey, the above and foregoing Ordinance was passed and approved by the following vote:

Ayes: Courtright, Thorne, Crawley, Massey and Thomas

Abstentions:

Nays:

Absent: Adams and Redwine

At regular meeting July 15, 2024.



ROBERT CRAWLEY, MAYOR

ATTEST:



Christine Wallentine, City Clerk



EXHIBIT "A"
Property Description and Depiction

Being Lot 1 and Lot 2, Block 38, Original Town Plat, Denison, Grayson County, Texas, and commonly known as 221 N. Austin Avenue.



Exhibit "B" Site Plan

