CODE OF ORDINANCES
CITY OF
TOMBALL, TEXAS

Published in 2014 by Order of the City Council

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TOMBALL OFFICIALS

PREFACE

TOMBALL OFFICIALS

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PREFACE

This Code constitutes a recodification of the general and permanent ordinances of the City of Tomball, Texas.

Source materials used in the preparation of the Code were the 1993 Code, as supplemented, and ordinances subsequently adopted by the City Council. The source of each section is included in the history note appearing in parentheses at the end thereof. The absence of such a note indicates that the section is new and was adopted for the first time with the adoption of the Code. By use of the comparative tables appearing in the back of this Code, the reader can locate any section of the 1978 Code, as supplemented, any section of the 1993 Code, as supplemented and any ordinance included herein.

The chapters of the Code have been conveniently arranged in alphabetical order, and the various sections within each chapter have been catchlined to facilitate usage. Notes which tie related sections of the Code together and which refer to relevant state law have been included. A table listing the state law citations and setting forth their location within the Code is included at the back of this Code.

Chapter and Section Numbering System

The chapter and section numbering system used in this Code is the same system used in many state and local government codes. Each section number consists of two parts separated by a dash. The figure before the dash refers to the chapter number, and the figure after the dash refers to the position of the section within the chapter. Thus, the second section of chapter 1 is numbered 1-2, and the first section of chapter 6 is 6-1. Under this system, each section is identified with its chapter, and at the same time new sections can be inserted in their proper place by using the decimal system for amendments. For example, if new material consisting of one section that would logically come between sections 6-1 and 6-2 is desired to be added, such new section would be numbered 6-1.5. New articles and new divisions may be included in the same way or, in the case of articles, may be placed at the end of the chapter embracing the subject, and, in the case of divisions, may be placed at the end of the article embracing the subject. The next successive number shall be assigned to the new article or division. New chapters may be included by using one of the reserved chapter numbers. Care should be taken that the alphabetical arrangement of chapters is maintained when including new chapters.

Page Numbering System

The page numbering system used in this Code is a prefix system. The letters to the left of the colon are an abbreviation which represents a certain portion of the volume. The number to the right of the colon represents the number of the page in that portion. In the case of a chapter of the Code, the number to the left of the colon indicates the number of the chapter. In the case of an appendix to the Code, the letter immediately to the left of the colon indicates the letter of the appendix. The following are typical parts of codes of ordinances, which may or may not appear in this Code at this time, and their corresponding prefixes:

CHARTER	CHT:1
CHARTER COMPARATIVE TABLE	CHTCT:1
CODE	CD1:1
CODE APPENDIX	CDA:1
CODE COMPARATIVE TABLES	CCT:1
STATE LAW REFERENCE TABLE	SLT:1
CHARTER INDEX	CHTi:1
CODE INDEX	CDi:1

Indexes

The indexes have been prepared with the greatest of care. Each particular item has been placed under several headings, some of which are couched in lay phraseology, others in legal terminology, and still others in language generally used by local government officials and employees. There are numerous cross references within the indexes themselves which stand as guideposts to direct the user to the particular item in which the user is interested.

Looseleaf Supplements

A special feature of this publication is the looseleaf system of binding and supplemental servicing of the publication. With this system, the publication will be kept up to date. Subsequent amendatory legislation will be properly edited, and the affected page or pages will be reprinted. These new pages will be distributed to holders of copies of the publication, with instructions for the manner of inserting the new pages and deleting the obsolete pages.

Keeping this publication up to date at all times will depend largely upon the holder of the publication. As revised pages are received, it will then become the responsibility of the holder to have the amendments inserted according to the attached instructions. It is strongly recommended by the publisher that all such amendments be inserted immediately upon receipt to avoid misplacing them and, in addition, that all deleted pages be saved and filed for historical reference purposes.

Acknowledgments

This publication was under the direct supervision of Bill Carroll, Senior Code Attorney, and Nicole C. Fluitt, Editor, of the Municipal Code Corporation, Tallahassee, Florida. Credit is gratefully given to the

other members of the publisher's staff for their sincere interest and able assistance throughout the project.

The publisher is most grateful to Doris Speer, City Secretary, for her cooperation and assistance during the progress of the work on this publication. It is hoped that her efforts and those of the publisher have resulted in a Code of Ordinances which will make the active law of the City readily accessible to all citizens and which will be a valuable tool in the day-to-day administration of the City's affairs.

Copyright

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PART I CHARTER [1]

PREAMBLE

ARTICLE I. - INTRODUCTORY PROVISIONS

ARTICLE II. - FORM OF GOVERNMENT AND BOUNDARIES

ARTICLE III. - GENERAL PROVISIONS

ARTICLE IV. - POWERS OF THE CITY

ARTICLE V. - ELECTIONS

ARTICLE VI. - THE TOMBALL CITY COUNCIL

ARTICLE VII. - ADMINISTRATIVE SERVICES

ARTICLE VIII. - MUNICIPAL FINANCE

ARTICLE IX. - FRANCHISE AND PUBLIC UTILITIES

ARTICLE X. - MUNICIPAL PLANNING

ARTICLE XI. - RECALL OF OFFICERS

ARTICLE XII. - LEGISLATION BY THE PEOPLE, INITIATIVE AND REFERENDUM

[CHARTER COMPARATIVE TABLE]

FOOTNOTE(S):

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Editor's note— Printed herein is the home rule Charter of the city, as adopted by the voters at the election of January 17, 1987. Amendments to the Charter will be indicated by parenthetical history notes following amended provisions. The absence of a history note will indicate that the provision remains unchanged from the original Charter. Obvious misspellings have been corrected without notation. For stylistic purposes, a uniform system of headings, catchlines and citations to state statutes has been used, and the current references to statutes have been inserted in brackets following obsolete references as needed. Likewise, other additions made for clarity are indicated by brackets. (Back)

State constitution reference— Charter to be consistent with constitution and general laws, art. XI, § 5. (Back)

State Law reference— Home rule municipality, V.T.C.A., Local Government Code § 9.001 et seq. (Back)

PREAMBLE

We, the citizens of Tomball, Texas, in order to establish a Home Rule Municipal Government provide for the future progress of our City and obtain more fully the benefits of local self-government, do hereby adopt this Home Rule Charter in accordance with the Constitution and Statutes of the State of Texas; and do hereby declare the residents of the City of Tomball, in Harris County, Texas, living within the legally established boundaries of the said City, to be a political subdivision of the State of Texas incorporated forever under the name and style of the "City of Tomball" with such powers, rights and duties as herein provided.

(Rev. of 5-6-1995)

ARTICLE I. INTRODUCTORY PROVISIONS

Sec. 1.01. Corporate name.

Sec. 1.02. Meaning of the word "City."

Sec. 1.03. Meaning of the word "Council."

Sec. 1.04. Effect of Charter on existing law.

Sec. 1.05. Gender of wording.

Sec. 1.06. Renumbering of Charter.

Sec. 1.01. Corporate name.

The inhabitants of the City of Tomball, in Harris County, Texas, within the Corporate limits as now established and as hereafter established, shall continue to be and are hereby constituted a municipal body politic and corporate, in perpetuity, under the name of "The City of Tomball," and having such powers, privileges, rights, duties and immunities as are herein provided.

(Rev. of 5-6-1995)

Sec. 1.02. Meaning of the word "City."

When used in the Charter, unless otherwise apparent from the context, the word "City" shall be construed to mean the City of Tomball.

(Rev. of 5-6-1995)

Sec. 1.03. Meaning of the word "Council."

When used in the Charter, unless otherwise apparent from the context, the word "Council" shall be construed to mean the City Council of the City of Tomball.

(Rev. of 5-6-1995)

Sec. 1.04. Effect of Charter on existing law.

All codes, ordinances, resolutions, rules and regulations in force in the City on the effective date of this Charter, and not in conflict with this Charter, shall remain in force until altered, amended or repealed by Council. All taxes, assessments, liens, encumbrances and demands, of or against the City, fixed or established before such date, or for the fixing or establishing of which proceedings have begun at such

date, shall be valid when properly fixed or established either under law in force at the time of the beginning of such proceedings or under the law after the adoption of this Charter.

(Rev. of 5-6-1995)

Sec. 1.05. Gender of wording.

The masculine gender of the wording used throughout this Charter shall always be interpreted to mean either sex.

(Rev. of 5-6-1995; Ord. No. 2014-14, § 2, 6-16-2014)

Sec. 1.06. Renumbering of Charter.

Subsequent to the Charter amendment election of May 10, 2014, the Council shall by ordinance authorize the general editing of this Charter to renumber and rearrange as necessary all articles, sections, and subsections therein, or amendments thereto.

(Rev. of 5-10-2014, amd. no. 5(1.10); Ord. No. 2014-14, § 2, 6-16-2014)

ARTICLE II. FORM OF GOVERNMENT AND BOUNDARIES

Sec. 2.01. Form of government.

Sec. 2.02. Boundaries.

Sec. 2.03. Annexation.

Sec. 2.04. Detachment of territory.

Sec. 2.05. Boards, agencies and commissions.

Sec. 2.01. Form of government.

The municipal government provided by the Charter shall be known as the "Council-Manager" Government. Pursuant to its provisions and subject only to the limitations imposed by the State Constitution, the Statutes of this State and by this Charter, all powers of the City shall be vested in an elective Council which shall enact local legislation, adopt budgets, determine policies and appoint the City Manager, who in turn, shall be held responsible to the Council for the execution of the laws and the administration of the government of the City. All powers of the City shall be exercised in the manner prescribed by this Charter, or if the manner be not prescribed, then in such manner as may be prescribed by ordinance, the State Constitution or the Statutes of this State.

(Rev. of 5-6-1995)

State law reference— Form of government, V.T.C.A., Local Government Code § 26.021.

Sec. 2.02. Boundaries.

The boundaries and limits of the City are hereby established and described as those which exist under authority of the current City ordinances as displayed on a map maintained by the City Secretary and those boundaries established and changed hereafter as amended.

(Rev. of 5-6-1995)

State law reference— Municipal boundaries, V.T.C.A., Local Government Code § 41.001 et seq.

Sec. 2.03. Annexation.

The Council may by ordinance annex territory lying adjacent to the City with or without the consent of the inhabitants in such territory or the owners thereof, not inconsistent with the procedural rules prescribed by law applicable to the cities operating under charters as adopted or amended under State law.

As provided by State statutes, any annexation of territory initiated at the request of the landowner shall not be charged against the City's annual annexation quota.

(Rev. of 5-6-1995)

State law reference— Municipal annexation, V.T.C.A., Local Government Code § 43.001 et seq.; annexation of property during tax year, V.T.C.A., Tax Code § 26.14.

Sec. 2.04. Detachment of territory.

Territory lying within the boundary limits of the City and adjoining the outer boundary of the City may be detached from the City by ordinance following a petition or by ordinance following public notice. However, any territory so detached shall be liable for its pro rata share of any debts incurred while it was a part of the City, and the City shall continue to levy and collect taxes on the property within said territory until indebtedness has been discharged.

(Rev. of 5-6-1995)

State law reference— Disannexation, V.T.C.A., Local Government Code § 43.141 et seq.

Sec. 2.05. Boards, agencies and commissions.

The Council shall have the authority to establish by ordinance such boards, agencies and commissions as it may deem necessary or desirable for the conducting of the City's business and the management of its affairs. The membership, authority, duties, functions and responsibilities of such boards, agencies and commissions shall be such as are specified by ordinance. The authority, duties, functions and responsibilities thus granted to and conferred on such boards, agencies and commissions shall not be incompatible with the provisions of this Charter and shall in no manner conflict with, usurp or transfer any privilege, authority, duty, function or responsibility specifically granted herein or by the laws of the State of Texas to another office, board, agency or commission of the City.

(Rev. of 5-6-1995)

ARTICLE III. GENERAL PROVISIONS

Sec. 3.01. Official oath.

Sec. 3.02. Amending the Charter.

Sec. 3.03. Severability clause.

Sec. 3.04. Judicial notice.

Sec. 3.05. Public records.

Sec. 3.06. Official newspaper.

Sec. 3.07. Provisions relating to assignment, execution and garnishment.

Sec. 3.08. Security and bond non-requirement.

Sec. 3.01. Official oath.

Before entering upon the duties of their respective offices, all officers of the City shall take and subscribe to the official oath prescribed in the Constitution of the State of Texas.

(Rev. of 5-6-1995)

State constitution reference— Oath of elected officers, art. XVI, § 1.

Sec. 3.02. Amending the Charter.

Amendments to this Charter may be framed and submitted to the voters of the City in the manner provided by State law.

(Rev. of 5-6-1995)

State law reference— Charter commission, V.T.C.A., Local Government Code §§ 9.002, 9.003; Charter amendments, V.T.C.A., Local Government Code § 9.004 et seq.

Sec. 3.03. Severability clause.

If any Section or part of a Section of this Charter is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity shall not invalidate or impair the validity, force or effect of any other Section or part of a Section of this Charter.

(Rev. of 5-6-1995)

Sec. 3.04. Judicial notice.

This Charter shall be deemed an official document; shall have the force and effect of a general law; may be read in evidence without pleading or proof; and judicial notice shall be taken hereof in all courts and places without further proof.

(Rev. of 5-6-1995)

Sec. 3.05. Public records.

All public records of every office, department, agency or other entity of the City shall be open to inspection by any citizen at all reasonable times, except for those records exempted by the Texas Open Records Act or other law.

(Rev. of 5-6-1995)

State law reference— Local Government Records Act, V.T.C.A., Local Government Code § 201.001 et seq.

Sec. 3.06. Official newspaper.

The Council shall have power to contract with, and by ordinance or resolution, annually designate a public newspaper of general circulation in the City as the official newspaper thereof and to continue as such until another is designated, and shall cause to be published therein all ordinances, notices and other matters required to be published by this Charter, by the ordinances of the City or by the Constitution or laws of the State of Texas.

(Rev. of 5-6-1995)

Sec. 3.07. Provisions relating to assignment, execution and garnishment.

The property, real and personal, belonging to the City shall not be sold or appropriated under any writ of execution or cost bill; and no lien of any kind shall ever exist against any such property owned by the City except that the lien be created or authorized by this Charter or state law. The funds belonging to the City in the hands of any person, firm or corporation shall not be subject to garnishment, attachment or sequestration nor shall the City be subject to garnishment on account of any debt it may owe or funds or property it may have on hand or owing to any person. Neither the City nor any of its officers or agents shall be required to answer any writ or garnishment on any account whatever. The City shall not be obligated to recognize any assignment of wages or funds by its employees, agents or contractors, except as required by state or federal law.

(Rev. of 5-6-1995; Rev. of 5-10-2014, amd. no. 6(3.07))

State law reference— Garnishment, V.T.C.A., Civil Practice and Remedies Code § 63.001 et seq.; garnishment of municipal funds, V.T.C.A., Local Government Code § 101.023.

Sec. 3.08. Security and bond non-requirement.

It shall not be necessary in any action, suit or proceedings in which the City is a party, for any bond or other security to be demanded or executed by or on behalf of said City in any of the State Courts, but in all such actions, suits, appeals or proceedings same shall be conducted in the manner as if such bond or other security had been given as required by law.

(Rev. of 5-6-1995)

State law reference— Cities exempt from security for court costs, V.T.C.A., Civil Practice and Remedies Code § 6.002.

ARTICLE IV. POWERS OF THE CITY [2]

Sec. 4.01. General.

Sec. 4.02. General powers adopted.

Sec. 4.03. Eminent domain.

Sec. 4.04. Required notice for claims against the City.

Sec. 4.01. General.

The City may use a corporate seal; may sue and be sued; may contract and be contracted with; may implead and be impleaded in all courts in all matters whatsoever; may cooperate with the government of the State of Texas or any agency thereof, the Federal Government or any agency thereof or any political subdivision of the State of Texas; and shall have all the powers granted to Home Rule cities by the Constitution and laws of the State of Texas, together will all the implied powers necessary to carry into execution of all the powers granted. The City may own or acquire property within or without its boundaries for any municipal purpose in fee simple or in any lesser interest or estate, by purchase, gift, devise, lease or condemnation and may sell, hold, lease, manage, control and police any property now owned by it or which it may hereafter acquire, and shall have the right to lease or let its property whether inside or outside the City limits, subject to the limitation hereinafter set out, and may construct, own, lease, operate and regulate the public utilities; may assess, levy and collect taxes for general and special purposes on all lawful subjects of taxation; may borrow money on the faith and credit of the City by issuance and sale of bonds, warrants or notes of the City, may appropriate the money of the City for all lawful purposes; may regulate and control the use, for whatever purpose, of the streets and other public places; may make and enforce all police, health, sanitary and other regulations; and may pass such ordinances as may be expedient for the protection and maintenance of good government, peace and welfare of the City, for the performance of the functions thereof, for the order and security of its residents; and may provide suitable penalties for the violation of any ordinance enacted by the City; and, except as prohibited by the Constitution and laws of this State or restricted by this Charter, the City may exercise all municipal powers, functions, rights, privileges and immunities of every name and nature whatsoever.

(Rev. of 5-6-1995)

Sec. 4.02. General powers adopted.

The enumeration of the particular powers in this Charter shall not be held or deemed to be exclusive but in addition to the powers enumerated herein or implied hereby or appropriate to the exercise of such powers, the City shall have and may exercise all power of local self-government and all other powers which, under the Constitution and laws of the State of Texas, it would be competent for this Charter specifically to enumerate.

(Rev. of 5-6-1995)

Sec. 4.03. Eminent domain.

The City shall have the full power and right to exercise the power of eminent domain when necessary or desirable to carry out any of the powers conferred upon it by this Charter or by the Constitution and laws of the State of Texas. The City may exercise the power of eminent domain in any manner authorized or permitted by the Constitution and laws of this State. The power of eminent domain hereby conferred shall include the right of the City to take the fee in land so condemned and such power and authority shall include the right to condemn public property for such purposes. The City shall have and possess the power of condemnation for any municipal or public purpose even though not specifically enumerated in this Charter.

(Rev. of 5-6-1995)

State law reference— Eminent domain, V.T.C.A., Property Code § 21.001 et seq., V.T.C.A., Local Government Code § 251.001 et seq.

Sec. 4.04. Required notice for claims against the City.

Before the City shall be liable for damages for the death or personal injuries of any person or for damages to or destruction of property of any kind, the person injured, if living, or his representatives, if deceased, or the owner of the property damaged or destroyed, his agent or attorney shall give the City Manager or City Secretary notice in writing of such death, injury, damage or destruction, duly verified by affidavit, within six months after the damages were sustained, stating specifically in such written notice when, where, and how the death, injury, damage or destruction occurred, and the apparent extent of any such injury, the amount of damages sustained, the actual residence of the claimant by street and number at the date the claim is presented, the actual residence of such claimant for six months immediately preceding the occurrence of such death, injury, damage or destruction and the names and addresses of all witnesses upon whom it is relied to establish the claim for damages. No action at law for damages shall be brought against the City for such death, injury, damage or destruction prior to the expiration of 90 days after the notice herein described has been filed with the City Manager or City Secretary.

(Rev. of 5-6-1995)

Editor's note—

See also V.T.C.A., Civil Practice and Remedies Code § 101.101 for notice requirements.

State law reference— Governmental liability, V.T.C.A., Civil Practice and Remedies Code ch. 101 et seq.

FOOTNOTE(S):

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State Law reference— General powers of municipalities, V.T.C.A., Local Government Code § 51.001 et seq.; authority of local self-government, V.T.C.A., Local Government Code § 51.072; eminent domain, V.T.C.A., Property Code § 21.001 et seq., V.T.C.A., Local Government Code § 251.001 et seq. (Back)

ARTICLE V. ELECTIONS [3]

Sec. 5.01. Elections: regular and special.

Sec. 5.02. Regulations and laws governing City elections.

Sec. 5.03. Filing for office.

Sec. 5.04. Official ballot.

Sec. 5.05. Election by majority.

Sec. 5.06. Conducting elections.

Sec. 5.07. Canvassing elections.

Sec. 5.08. Council to be judge of election qualifications.

Sec. 5.09. Oath of office.

Sec. 5.01. Elections: regular and special.

A. All City elections shall be conducted in accordance with the Texas Election Code.

B. The regular City election shall be held annually on the second Saturday in May or such other date as required by the Texas Election Code. The Council shall be responsible for specifying the places for holding such elections.

C. The Council may, by resolution or ordinance, order a special election for purposes consistent with this Charter and laws of the State of Texas. The Council will fix the time and places for such a special election and provide all means for holding same.

D. Municipal elections shall be conducted by election officials appointed by the Council, or as otherwise prescribed by law. Sample ballots identical in format to those used in the specific election shall be posted in the voting place(s) for the purpose of voter orientation.

E. All municipal elections shall be publicized in accordance with the Texas Election Code.

(Rev. of 5-6-1995; Rev. of 5-10-2014, amd. no. 7(5.01))

Editor's note—

See also V.T.C.A., Election Code § 41.001 for election date to be second Saturday in May.

Sec. 5.02. Regulations and laws governing City elections.

The provisions of the General Election Laws of the State of Texas shall apply to all elections held under this Charter. All elections provided for by this Charter shall be conducted by the election authorities established by law.

The Council shall adopt any ordinances or regulations which it considers desirable, consistent with the election laws of the State of Texas and this Charter.

(Rev. of 5-6-1995)

State law reference— Elections generally, V.T.C.A., Election Code ch. 1 et seq.

Sec. 5.03. Filing for office.

Any qualified citizen as defined by Article [Section] 6.03 of this Charter may file for election to the Office of Mayor or Council Member. A signed application and prescribed oath shall be filed with the City Secretary in accordance with the Texas Election Code.

(Rev. of 5-6-1995; Rev. of 5-10-2014, amd. no. 8(5.03))

Sec. 5.04. Official ballot.

Candidates for all offices may reside in any portion of the City. The names of all candidates for office, except such as may have withdrawn, become ineligible or died, shall be printed on the official ballot in an order determined by the drawing of lots conducted by the City Secretary. Council members shall be designated on the official ballot with the place system, as defined by Article [Section] 6.02 of this Charter.

The position number sought by the candidate shall be indicated on the ballot. Incumbent Council members seeking re-election must file for the position for which they were originally elected.

(Rev. of 5-6-1995)

State law reference— Ballot form, content, and preparation, V.T.C.A., Election Code ch. 52.

Sec. 5.05. Election by majority.

At the regular election, or any special election held to fill vacancies in the Mayor or Council member positions, the candidate receiving the majority of votes cast for the position shall be declared elected. If none of the candidates for a given position receives a majority of the votes cast, a run-off election shall be conducted in accordance with the Texas Election Code between the two candidates receiving the greatest number of votes.

(Rev. of 5-6-1995)

State law reference— Vote required for election to office, V.T.C.A., Election Code ch. 2.

Sec. 5.06. Conducting elections.

All residents who have complied with voter registration requirements as provided by the State Election Code shall be eligible to vote in the City elections. Election officials will be appointed by the Council, consistent with State laws, and compensation shall be set by the Council. Early voting shall be governed by the State Election Code of the State of Texas.

(Rev. of 5-6-1995; Rev. of 5-10-2014, amd. no. 9(5.06))

State law reference— Voter qualifications and registration, V.T.C.A., Election Code ch. 11 et seq.

Sec. 5.07. Canvassing elections.

The returns of all elections shall be delivered forthwith to the Mayor and City Secretary by the Election Judge. The Council shall canvass the returns and declare the results of such election in accordance with the provisions prescribed by V.T.C.A., Election Code § 67.003 and Federal election laws.

(Rev. of 5-6-1995)

Sec. 5.08. Council to be judge of election qualifications.

The Council shall make all regulations which it considers needful or desirable, not inconsistent with this Charter or the laws of the State of Texas as now or hereafter amended, for the conduct of municipal elections, for the prevention of fraud in such elections and for the recount of ballots in case of doubt of fraud. Municipal elections shall be conducted by appointed election authorities in accordance with Federal and State law. Should a run-off election result from any regular or special election, the appointed election authorities shall continue to act under their original commissions and shall conduct said resulting run-off election.

(Rev. of 5-6-1995)

Sec. 5.09. Oath of office.

All elected officials shall, before entering upon the duties of their respective offices, take and subscribe to the official oath prescribed in the Constitution of the State of Texas.

(Rev. of 5-6-1995)

State constitution reference— Oath of elected officers, art. XVI, § 1.

FOOTNOTE(S):

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State Law reference— Elections generally, V.T.C.A., Election Code ch. 1 et seq. (Back)

ARTICLE VI. THE TOMBALL CITY COUNCIL [4]

Sec. 6.01. Powers of the City Council.

Sec. 6.02. Number, selection, and term.

Sec. 6.03. Qualifications.

Sec. 6.04. Compensation.

Sec. 6.05. Nepotism.

Sec. 6.06. Holding dual offices.

Sec. 6.07. Conflict of interest in City contracts.

Sec. 6.08. Mayor and Mayor Pro-Tem.

Sec. 6.09. Vacancies.

Sec. 6.10. Appointments and removals.

Sec. 6.11. Interference with administration.

Sec. 6.12. Meetings of Council.

Sec. 6.13. Rules of procedure.

Sec. 6.14. Ordinances.

Sec. 6.15. Official bonds for City employees.

Sec. 6.16. Investigative body.

Sec. 6.01. Powers of the City Council.

All powers and authority which are expressly or impliedly conferred on or possessed by the City shall be vested in and exercised by the Council. The Council shall levy all taxes, apportion all funds of the City

among the various departments, adopt the budget, establish special funds for special purposes, authorize the issuance of bonds, order elections, canvass the returns and declare the results, enact all ordinances of any nature, provide penalties for their violation, grant all franchises which they deem proper, set compensation for City officers and employees and have general power over the City finances, subject to the conditions and limitations imposed by this Charter.

(Rev. of 5-6-1995)

Sec. 6.02. Number, selection, and term.

The Legislative and governing body of the City shall consist of a Mayor and five (5) Councilmen and shall be known as the "City Council of the City of Tomball, Harris County, Texas."

A. The Mayor shall be elected from the City at large. The Councilmen shall be elected from the City at large by positions known as Positions 1, 2, 3, 4, and 5.

B. The Mayor shall be the presiding officer of the Council and shall be recognized as the head of the City Government for all ceremonial purposes and by the Governor for purposes of military law. The Mayor shall be allowed to vote only in case of a tie vote and shall not have the authority to veto any action of the Council.

C. The Mayor and each Councilman shall hold office for a period of three (3) years or until his successor is elected and qualified. All elections shall be held in the manner provided for by this Charter and the election laws of the State of Texas.

D. There shall be no limitation of elected terms for the Office of Mayor and Councilman.

(Rev. of 5-6-1995; Rev. of 5-10-2014, amd. no. 10(6.02); Ord. No. 2014-14, § 3, 6-16-2014)

Sec. 6.03. Qualifications.

Each member of the Council shall be a resident citizen of the City, shall be a minimum of eighteen (18) years of age and a qualified voter of the State of Texas, shall have been a resident citizen of Tomball for a period of not less than one (1) year immediately preceding his election. An incumbent seeking re-election must file for the same position number. Any person presently holding an elective office shall resign that office upon election to another elective office of profit or trust. No employee of the City shall continue in such position after election to an elective office. A citizen cannot file for an elective office if the candidate has a felony conviction except as provided by the State Election Code. The Mayor or Councilman shall, if convicted of a felony while in office, immediately upon conviction thereof, forfeit said office. If the Mayor or any Councilman fails to maintain the foregoing qualifications or shall be absent from two (2) regularly scheduled meetings within any six (6) month period without valid excuse, the Council must, at its next regular meeting, declare a vacancy as set forth in Section 6.09 of this Charter.

(Rev. of 5-6-1995; Rev. of 5-10-2014, amd. no. 11(6.03))

State law reference— Age and residence requirements for city office, V.T.C.A., Election Code § 141.003.

Sec. 6.04. Compensation.

By ordinance, the Council shall set the compensation for its members in attendance at its meetings. The Council shall also set a monthly stipend for the Mayor. The Mayor and City Councilmen shall also be reimbursed for actual expenses incurred while on official business.

(Rev. of 5-6-1995)

Sec. 6.05. Nepotism.

No officer of the City or officer of any City Board shall appoint, or vote for or confirm the appointment to any office, position, clerkship, employment or duty, of any person related with the second-degree of affinity (by marriage) or within the third-degree by consanguinity (by blood) to the person so appointing or so voting, or related to any other member of the governing body or board of the City; provided that any person who has been continuously employed in any employment for a period of six months prior to the election or 30 days prior to the appointment of the officer or member of a board may be retained in such employment, as provided by state statutes.

(Rev. of 5-6-1995)

State law reference— Degrees of relationship, nepotism prohibitions, V.T.C.A., Government Code ch. 573.

Sec. 6.06. Holding dual offices.

The Mayor and City Councilmen are prohibited by the provision of Article XVI, Section 40, of the Texas Constitution and statutes of the State of Texas, from holding more than one civil office of emolument concurrently. Violation of this Section shall constitute malfeasance in office and any officer found guilty thereof shall be subject to removal from office.

(Rev. of 5-6-1995)

State law reference— Dual officeholding, V.T.C.A., Government Code ch. 574.

Sec. 6.07. Conflict of interest in City contracts.

No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or shall be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or services except as provided by State law. Any violation of this Section shall constitute malfeasance in office, and any officer or employee guilty thereof shall be subject to removal from his office or position. Any violation of this Section, with the knowledge, expressed or implied, of the person or corporation contracting with the Council may invalidate the contract involved.

(Rev. of 5-6-1995)

State law reference— Regulation of conflicts of interest of officers of municipalities, V.T.C.A., Local Government Code ch. 171.

Sec. 6.08. Mayor and Mayor Pro-Tem.

The Mayor shall be the official head of the City government. The Mayor shall be the Chairman and shall preside at all meetings of the Council. The Mayor shall see that all ordinances, bylaws and resolutions of the Council are faithfully obeyed and enforced. The Mayor shall, when authorized by the Council, sign all official documents such as ordinances, resolutions, conveyances, grant agreements, official plats, contracts and bonds. The Mayor shall appoint special committees as he deems advisable, subject to approval by Council, or as instructed by the Council. The Mayor shall perform such other duties consistent with this Charter or as may be imposed upon him by Council.

The Council, at its first meeting after the election of Councilmen, shall elect one of its members Mayor Pro-Tem, and he shall perform all the duties of the Mayor in the absence or disability of the Mayor. The Mayor Pro-Tem shall retain his voting privileges when acting in the absence of the Mayor.

(Rev. of 5-6-1995)

Sec. 6.09. Vacancies.

When a vacancy occurs in the Council, the following provisions shall apply, to wit:

Any vacancy or vacancies occurring for which the unexpired term is twelve (12) months or less shall be filled by appointment of the Council. Any vacancy or vacancies for which the unexpired term is for more than twelve (12) months must be filled by a majority of voters voting in a special election called for such purpose in accordance with the Texas State Constitution.

It is further provided that in a special or regular election: The person(s) elected to fill a vacancy or vacancies shall serve only the unexpired term for that particular position.

(Rev. of 5-6-1995; Rev. of 5-10-2014, amd. no. 12(6.09))

State law reference— Uniform election dates, V.T.C.A., Election Code § 41.001.

Sec. 6.10. Appointments and removals.

Neither the Council nor any of its members shall in any manner dictate the appointment or removal of any City administrative officers or employees whom the City Manager or any of his subordinates are empowered to appoint. (See Section 7.01, C-1.)

(Rev. of 5-6-1995)

Sec. 6.11. Interference with administration.

Except for the purpose of inquiries and investigations under Section 6.16, the Council or its members shall deal with City officers and employees who are subject to the direction and supervision of the City Manager solely through the City Manager, and neither the Council nor its members shall give orders to any such officer or employee, either publicly or privately.

(Rev. of 5-6-1995)

Sec. 6.12. Meetings of Council.

The Council shall schedule at least two (2) regular meetings each month and as many additional meetings as it deems necessary to transact the business of the City and its citizens. The Council shall fix the days and time of the regular meetings. All regular meetings of the Council shall be held at the City of Tomball City Hall, unless the Council votes to approve a location other than the City Hall in the event it is determined to be in the public interest. All meetings shall be open and accessible to the public; however, the Council may recess to an Executive Session only for the purposes provided by the Texas Open Meetings Act. Final action thereon shall not be taken by the Council until the matter is placed on the agenda and a vote taken in an open meeting.

The City Secretary, upon written request of the Mayor or any three (3) Council members, shall call special meetings of the Council, notice of such special meetings shall be given to each member of the Council, which said notice shall state the date for such meeting and the subject to be considered at such meeting, and no other subject shall be thereby considered.

(Rev. of 5-6-1995; Rev. of 5-10-2014, amd. no. 13(6.12))

State law reference— Open meetings of governmental bodies, V.T.C.A., Government Code § 551.001 et seq.

Sec. 6.13. Rules of procedure.

The Council shall, by ordinance, determine its own rules and order of business and the rules shall provide that citizens of the City shall have a reasonable opportunity to be heard at any meeting in regard to any matter under consideration. The Council shall provide for the taking and recording of minutes of all meetings, and such minutes shall be a public record. Voting, except on procedural motions, shall be by roll call and the ayes, nays and abstentions shall be recorded in the minutes. A Councilman shall state the reason for an abstaining vote. Four Council members, one of whom may be the Mayor, shall constitute a quorum for the purpose of transaction of business and no action of the Council shall be valid or binding unless adopted by the affirmative vote of three or more members of the Council.

The Mayor shall have a binding vote only in case of tie votes from Councilmen.

The minutes shall reflect the names of all Council members in attendance at both regular and special Council meetings, with status of absence being addressed as "Excused" or "Unexcused" by the presiding officer. Council, by resolution, shall define the guidelines for determination of absences "Excused" and "Unexcused."

(Rev. of 5-6-1995)

Sec. 6.14. Ordinances.

In addition to such acts of the Council as are required by statute or by this Charter to be by ordinance, every act of the Council establishing a fine or other penalty or providing for the expenditure of funds or for the contracting of indebtedness shall be by ordinance. The enacting clause of all ordinances shall be, "BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL:"

A. *Procedure for Passage of Ordinances.* Every ordinance shall be introduced in written or printed form and, upon passage, shall take effect at the time indicated therein; provided that any ordinance imposing a penalty, fine or forfeiture for a violation of its provisions shall become effective not less than fourteen (14) days from the date of its passage. The City Secretary shall give notice of every ordinance under consideration, by causing the caption or summary, including the penalty, fine, or forfeiture for a violation of any such ordinance to be published in the official newspaper for the City after the first reading and at least once within fourteen (14) days after the passage of said ordinance. He shall note on every ordinance, the caption of which is hereby required to be published, and on the record thereof, the fact that same has been published as required by the Charter, and the date of such publication, and promulgation of such ordinance; provided, that the provisions of this section shall not apply to the correction, revision and modification of the ordinances of the City for publication in book or pamphlet form. It shall be necessary to the validity of any ordinance that it shall be read two (2) times and considered at two (2) sessions of the Council unless addressed otherwise by this Charter. At the first (1st) reading, said ordinance shall be read in its entirety unless a motion is made and passed suspending the requirement of the reading of the ordinance, in which case such ordinance shall be read by caption only, followed by an explanation of the ordinance. The one (1) remaining presentation of said ordinance may be by caption only. Copies of said ordinances shall be made available at the City Hall upon request. Every ordinance shall be authenticated by the signature of the Mayor and City Secretary and shall be systematically recorded in an ordinance book in a manner approved by the Council. It shall only be necessary to record the caption or title of ordinances in the minutes or journal of Council meetings. The Council shall have power to cause the ordinances of the City to be corrected, revised, codified and printed in code form as often as the Council deems advisable, and such printed code, when adopted by the Council, shall be in full force and effect without the necessity of publishing the same or any part thereof in a newspaper. However, if the ordinance is amended, it then must be published one time, by caption only, in the official City newspaper. Such printed code shall be admitted in evidence in all courts and places without further proof.

B. *Emergency Ordinances.* To meet a public emergency affecting life, health, property, or the public peace, the Council may adopt emergency ordinances. Such ordinances shall not levy taxes, grant or renew or extend a franchise, regulate the rate charged by any public utility for its services, or authorize the borrowing of money except to fund emergency appropriations in accordance with Article [Section] 8.15 of this Charter. An emergency ordinance shall be introduced in the form and manner generally prescribed for ordinances, except that it shall be plainly designated in the title as an emergency, with a description in clear and specific terms and with one reading sufficing for its passage. Such emergency clause shall require the affirmative vote of three members elected to Council. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced. After adoption, the ordinance shall become effective immediately and shall be published in the official newspaper for the City of Tomball once within 14 days after the passage of such ordinance. After adoption, the ordinance shall be numbered as required for other adopted ordinances, with the designation of "E" following the number. Every emergency ordinance so adopted, except one authorizing the borrowing of money as described herein, shall automatically stand repealed as of the sixty-first (61st) day following the day on which it became effective, but this shall not prevent reenactment of the ordinance.

(Rev. of 5-6-1995; Rev. of 5-10-2014, amd. no. 14(6.14))

State law reference— Publication of ordinances, V.T.C.A., Local Government Code § 52.013.

Sec. 6.15. Official bonds for City employees.

All City Officers and such employees as the Council may require, shall, before entering upon the duties of their offices or employment by the City, enter into a good and sufficient fidelity bond in a sum to be determined by the Council payable to the City and conditioned upon the faithful discharge of the duties of such persons and upon the faithful accounting of all monies, credits and things of value coming into the hands of such persons, and such bonds shall be signed as surety by some company authorized to do business under the laws of the State of Texas, and the premium on such bonds shall be paid by the City, and such bonds must be acceptable to the Council.

(Rev. of 5-6-1995)

Sec. 6.16. Investigative body.

The Council shall have the power to inquire into the official conduct of any department, agency, office, officer or employee of the City, and for that purpose shall have the power to administer oaths, subpoena witnesses, compel the production of books, papers and other evidence material to the inquiry. The Council shall provide by ordinance, penalties for contempt in failing or refusing to obey any such subpoena or to produce any such books, papers or other evidence, and shall have the power to punish any such contempt in the manner provided by such ordinance.

(Rev. of 5-6-1995)

FOOTNOTE(S):

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State Law reference— Form of government, V.T.C.A., Local Government Code § 26.001 et seq. (Back)

ARTICLE VII. ADMINISTRATIVE SERVICES

Sec. 7.01. City Manager.

Sec. 7.02. Assistant City manager.

Sec. 7.03. Police Department.

Sec. 7.04. City Secretary.

Sec. 7.05. Finance Director.

Sec. 7.06. City Fire Department.

Sec. 7.07. City Attorney.

Sec. 7.08. Municipal Court.

Sec. 7.09. Health Department.

Sec. 7.10. Department of Public Works.

Sec. 7.11. Department of Community Development.

Sec. 7.01. City Manager.

A. *Appointment and Qualifications.* The Council shall appoint an administrative and executive officer of the City who shall be responsible to the Council for the administration of all the affairs of the City. He shall be chosen by the Council solely on the basis of his executive and administrative training, experience and ability. No member of the Council shall, during the time for which he is elected and for one year thereafter, be appointed City Manager.

B. *Term and Salary.*

(1) The City Manager shall be appointed for a term not to exceed two years by a majority vote of the entire Council. The appointment shall be secured through an explicit contractual agreement which shall protect the rights of both the Council and the City Manager.

(2) The City Manager shall receive compensation as may be fixed by the Council.

C. *Duties of the City Manager.* The City Manager shall:

(1) Be responsible to the Council for the efficient and economical administration of the City government. He shall have the authority, with the approval of the Council, to appoint and remove all department heads. He shall have the authority to appoint and remove all other employees in the administrative service of the City. He may authorize the head of a department to appoint and remove subordinates in his respective department. Except for the purpose of inquiry, the Council and its members shall deal with the administrative service solely through the City Manager.

(2) Prepare the budget annually and submit it to the Council and be responsible for its administration after adoption.

(3) Prepare and submit to the Council, as of the end of the fiscal year, a complete report on the finances and administrative activities of the City for the preceding year.

(4) Keep the Council advised of the financial condition and future needs of the City and make such recommendations as may seem desirable.

(5) Perform such duties as may be prescribed by this Charter or may be required of him by the Council, not inconsistent with this Charter.

(6) Prepare a written report to the Council, first in 2019, and thereafter at intervals not exceeding five years, as to the need for revision of the city Charter, with special attention given to conflicts, if any, between the Charter and state law and recommending such amendments to the Charter as may seem necessary for legal, administrative, or other reasons.

(Rev. of 5-6-1995; Rev. of 5-10-2014, amd. no. 15(7.01); Ord. No. 2014-14, § 4, 6-16-2014)

Sec. 7.02. Assistant City manager.

The City Manager, with the approval of the Council, may appoint an Assistant City Manager. Such Assistant City Manager shall have all of the powers and duties as delineated by his job description, and in the event of the absence or disability of the City Manager, he shall fill all the duties of the City Manager.

(Rev. of 5-6-1995)

Sec. 7.03. Police Department.

A Police Department is established to preserve order, to strive to secure the safety of residents, to prevent violence and to protect life and property from injury and loss within the limits and allowable jurisdiction of the City.

A. *Chief of Police.* The Chief of Police is the senior officer of the Police Department. He is appointed by the City Manager, with the approval of the Council, for an indefinite term. With the approval of the City Manager, he appoints and removes the employees of the Police Department. He is responsible to the City Manager for the administration of the Police Department and the performance of Council-established duties and directives.

B. *Reserve Police.* The Chief of Police may appoint or remove "Reserve Police Officers" in accordance with guidelines established by the Council. No other persons, except as otherwise provided by the laws of the State of Texas, shall act as "special police" within the City.

(Rev. of 5-6-1995; Rev. of 5-10-2014, amd. no. 16(7.03))

State law reference— V.T.C.A., Penal Code ch. 1 et seq.; V.T.C.A., Transportation Code ch. 1 et seq.; municipal law enforcement, V.T.C.A., Local Government Code ch. 341.

Sec. 7.04. City Secretary.

There shall be a City Secretary for the City. The City Manager, with the approval of the Council, shall appoint a City Secretary and such assistants as the Council shall deem advisable. The City Secretary, or an Assistant City Secretary, shall give notice of Council meetings, shall keep the minutes of proceedings of such meetings, and shall authenticate by his signature and record in full in a book kept and indexed for the purpose, all ordinances and resolutions, and shall perform such other duties assigned by the City Manager and those elsewhere provided in this Charter and the laws of the State of Texas.

(Rev. of 5-6-1995; Rev. of 5-10-2014, amd. no. 17(7.04))

Sec. 7.05. Finance Director.

There shall be a Finance Director for the City. The City Manager, with the approval of the Council, shall appoint a Finance Director and such assistants as the Council shall deem advisable. The Finance Director shall perform the duties delegated to him by the City Manager and those which may be imposed upon him by the laws of the State of Texas.

(Rev. of 5-6-1995; Rev. of 5-10-2014, amd. no. 18(7.05))

Sec. 7.06. City Fire Department.

The Fire Department is established for general protection from fire for the residents of the City, for fire prevention education and enforcement, for salvage and rescue operations, and for other related activities as may be assigned by the Council. The department shall consist of full-time, part-time, volunteer members or any combination thereof. All such members shall function under the Standard Operating Guidelines of the Fire Department.

A. *Fire Chief.* The Fire Chief is the senior officer of the Fire Department. He is appointed by the City Manager, with the approval of the Council, for an indefinite term. With the approval of the City Manager, he appoints and removes employees of the Fire Department. His [He] is responsible to the City Manager for the administration of the Fire Department and the performance of Council-established duties and directives.

B. *Fire Marshal.* A Fire Marshal shall be selected by the Fire Chief, with the approval of the City Manager and shall be responsible for enforcement of the City Fire Codes and other functions as may be assigned by the Fire Chief. He shall be a member of the command staff of the Fire Department, and he may be removed from office by the Fire Chief with the approval of the City Manager.

C. *Mutual Aid Agreements with Other Fire Departments.* Subject to approval by the Council, the Fire Department may enter into inter-local and mutual aid agreements with other fire departments in the area by which to provide and receive assistance in emergency situation.

(Rev. of 5-6-1995; Rev. of 5-10-2014, amd. no. 20(7.07); Ord. No. 2014-14, § 5, 6-16-2014)

State law reference— Municipal fire protection, V.T.C.A., Local Government Code ch. 342.

Sec. 7.07. City Attorney.

The Council shall appoint an attorney duly licensed in the State of Texas, who shall be the City Attorney. He shall receive for his services such compensation as may be fixed by the Council and shall hold his office at the pleasure of Council. The City Attorney, or such other attorneys selected by him with the approval of the Council shall represent the City in all litigation. He shall be the legal advisor of, attorney and counsel for, the City and all officers and departments thereof. A City Attorney shall hold no other City office or City employment during the term for which he is appointed by the Council. Should a person serving as City Attorney become a candidate in a City election, he shall resign his position as City Attorney upon election to a City Office.

(Rev. of 5-6-1995; Ord. No. 2014-14, § 5, 6-16-2014)

Sec. 7.08. Municipal Court.

There shall be established and maintained a Court designated as a "Municipal Court" for the trial of misdemeanor offenses, with all such powers and duties as are now or hereafter may be prescribed by the laws of the State of Texas relative to Municipal or Recorder's Court.

A. The Judge of said Court shall be appointed by the Council, and shall be a licensed attorney, and shall receive such salary as may be fixed by the Council. The Judge of said Court shall hold office at the pleasure of the Council.

B. The Clerk of said Court and his deputies shall have the power to administer oaths and affidavits, make certificates, affix the seal of said Court thereto and generally do and perform any and all acts usual and necessary by the Clerk of Courts in issuing process of said courts and conducting the business thereof.

C. The Council shall appoint other licensed attorneys to act as Temporary Judges of said Court in case of disability or absence of the Judge of the Municipal Court. The salary of Temporary Judges shall be fixed by the Council.

D. A City Judge shall hold no other City office or City employment during the term for which he is appointed by the Council. Should a person serving as City Judge become a candidate in a City election, he shall resign his position as City Judge upon election to a City Office.

E. The Mayor shall serve as Judge of the Municipal Court in the absence of the City Judge or his alternates.

(Rev. of 5-6-1995; Rev. of 5-10-2014, amd. no. 21(7.09); Ord. No. 2014-14, § 5, 6-16-2014)

State law reference— Municipal courts, V.T.C.A., Government Code ch. 29.

Sec. 7.09. Health Department.

To assure a high quality of health and sanitation standards for the City, the City shall utilize and adhere to all rules and regulations regarding health and sanitation standards outlined, required, and governed by the Harris County Department of Health and the State Health Department.

(Rev. of 5-6-1995; Rev. of 5-10-2014, amd. no. 22(7.10); Ord. No. 2014-14, § 5, 6-16-2014)

State law reference— Health generally, V.T.C.A., Health and Safety Code ch. 1 et seq.

Sec. 7.10. Department of Public Works.

The City shall establish a Department of Public Works. The City Manager, with the approval of the Council, shall appoint a Director of Public Works who shall be the administrator of this department. The Department of Public Works shall perform such duties as maintenance of gas, water, and sewage facilities; maintenance of streets, collection of garbage; and such other duties as may be assigned by the City Manager.

(Rev. of 5-6-1995; Ord. No. 2014-14, § 5, 6-16-2014)

State law reference— Water and utilities, V.T.C.A., Local Government Code ch. 401 et seq.

Sec. 7.11. Department of Community Development.

There shall be a Director of Community Development for the City. The City Manager, with the approval of the Council, shall appoint a Director of Community Development and such assistants as the Council shall deem advisable. The Director of Community Development shall oversee the city's development processes, including planning and zoning, engineering, code enforcement, and inspections, and shall perform such other duties assigned by the City Manager and those elsewhere provided in this Charter and the laws of the State of Texas.

(Rev. of 5-6-1995; Rev. of 5-10-2014, amd. no. 23(7.12); Ord. No. 2014-14, § 5, 6-16-2014)

State law reference— Municipal regulation of housing and other structures, V.T.C.A., Local Government Code ch. 214.

ARTICLE VIII. MUNICIPAL FINANCE [5]

Sec. 8.01. Fiscal year.

Sec. 8.02. Budget as public record.

Sec. 8.03. Preparation and submission of budget.
Sec. 8.04. Anticipated revenues compared with other years.
Sec. 8.05. Proposed expenditures compared with other years.
Sec. 8.06. Notice of public hearing on budget.
Sec. 8.07. Public hearing of budget.
Sec. 8.08. Proceedings on budget after public hearings.
Sec. 8.09. Vote required for adoption.
Sec. 8.10. Date of final adoption.
Sec. 8.11. Effective date of budget; certification; copies made available.
Sec. 8.12. Budgetary amendments.
Sec. 8.13. Budget established amount to be raised by property tax.
Sec. 8.14. Estimated expenditures shall not exceed estimated resources.
Sec. 8.15. Emergency appropriation.
Sec. 8.16. Purchase procedure.
Sec. 8.17. Disbursement of funds.
Sec. 8.18. Power to tax.
Sec. 8.19. Property subject to tax; rendition, appraisal and assessment.
Sec. 8.20. Taxes, when due and payable.
Sec. 8.21. Tax liens.
Sec. 8.22. Tax remission and discounts.
Sec. 8.23. Issuance of bonds.
Sec. 8.24. Independent audit.

Sec. 8.01. Fiscal year.

The fiscal year of the City shall begin at the first day of October and shall end on the last day of September of each year. Such fiscal year shall constitute the budget and accounting year.

(Rev. of 5-6-1995)

State law reference— City fiscal year, V.T.C.A., Local Government Code § 101.022, V.T.C.A., Tax Code § 1.05.

Sec. 8.02. Budget as public record.

The budget and all supporting schedules shall be filed with the person performing the duties of City Secretary and shall be submitted to the Council. Copies of the budget and the capital program, as adopted, shall be public records and shall be made available to the public at suitable places in the City to include the City Hall, and at two other public locations within the corporate limits of the City.

(Rev. of 5-6-1995; Rev. of 5-10-2014, amd. no. 25(8.02))

State law reference— Local Government Records Act, V.T.C.A., Local Government Code § 201.001 et seq.

Sec. 8.03. Preparation and submission of budget.

The City Manager, between 60 and 120 days prior to the beginning of each fiscal year, shall submit to the Council a proposed budget, which shall provide a complete financial plan for the fiscal year and shall contain the following:

A. A budget message which shall contain an explanation of the budget and an outline of the proposed financial policies of the City for the fiscal year; shall set forth the reasons for salient changes from the previous fiscal year in expenditures and revenue items; and shall explain any major changes in financial policy.

B. A consolidated statement of anticipated receipts and proposed expenditures for all funds.

C. A review and analysis of property valuations.

D. An analysis of tax rates.

E. The tax levies and tax collections by years for at least the immediate past five years.

F. The general funds resources in detail.

G. The special funds resources in detail.

H. A summary of proposed expenditures by function, department, and activity with detailed estimates of expenditures shown separately for each activity to support the summary.

I. A revenue and expense statement for all types of bonds, time warrants and other indebtedness.

J. A description of all bond issues, time warrants, and other indebtedness outstanding, showing rate of interest, date of issue, maturity date, amount authorized, amount issued, and amount outstanding.

K. A schedule of requirements for the principal and interest of each issue of bonds, time warrants, and other indebtedness.

L. The appropriation ordinance.

M. The tax levying ordinance.

N. The total monies in all reserves (designated, undesignated, and debt) shall not exceed the budgeted City expenditures for the fiscal year. Likewise, the total monies included in all reserves shall not be less than one quarter of the budgeted City expenditures for a fiscal year.

The total proposed expenditures shall not exceed the total of estimated resources.

(Rev. of 5-6-1995)

State law reference— Municipal budget, V.T.C.A., Local Government Code ch. 102.

Sec. 8.04. Anticipated revenues compared with other years.

In preparing the budget, the City Manager shall place in parallel columns opposite the items of revenue the actual amount of each revenue item for the last completed fiscal year, the estimated amount for the current fiscal year and the proposed amount for the ensuing fiscal year.

(Rev. of 5-6-1995)

Sec. 8.05. Proposed expenditures compared with other years.

In preparing the budget, the City Manager shall place in parallel columns opposite the items of expenditures the actual amount of such items of expenditures for the last completed fiscal year, the estimated amount for the current fiscal year and the proposed amount for the ensuing fiscal year. The total of proposed expenditures shall not exceed the total of estimated income.

(Rev. of 5-6-1995)

Sec. 8.06. Notice of public hearing on budget.

At the Council meeting at which the budget is submitted, the Council shall authorize the publishing of the Budget Hearing notice in the City's official newspaper. The notice shall set forth the time, place and date of the budget hearing and the location and times at which the citizens may inspect the proposed budget. The notice shall be published at least 14 days prior to the scheduled date of the meeting.

(Rev. of 5-6-1995)

Editor's note—

See also V.T.C.A., Local Government Code § 102.0065 for special notice by publication for budget.

Sec. 8.07. Public hearing of budget.

The Public Hearing, as required in Section 8.06, shall give the citizens ample opportunity and time to speak for or against any and all items in the proposed budget.

(Rev. of 5-6-1995)

State law reference— Public hearing on proposed budget, V.T.C.A., Local Government Code § 102.006.

Sec. 8.08. Proceedings on budget after public hearings.

After the Public Hearing, the Council may insert new items or make changes in the proposed budget. Should changes be made, the same "Notice of Public Hearing on Budget" (Section 8.06) must be followed. After public hearings are completed and no changes made as a result, the Council may adopt the budget. In no case may the Council bring to a vote a budget in which expenditures are greater than the total estimated income.

(Rev. of 5-6-1995)

Sec. 8.09. Vote required for adoption.

The budget shall be adopted by a majority vote of the Council.

(Rev. of 5-6-1995)

State law reference— Adoption of budget, V.T.C.A., Local Government Code § 102.007.

Sec. 8.10. Date of final adoption.

The budget shall be adopted no later than 15 days prior to the beginning of the fiscal year. Should the Council fail to adopt a new budget, the then-existing budget, together with its tax levying ordinance and its appropriation ordinance, shall be deemed adopted, on a month-to-month basis, for the ensuing fiscal year. Additional budget hearings may be held with proper notice (Section 8.06), until a budget is ultimately adopted.

(Rev. of 5-6-1995)

State law reference— Adoption of budget, V.T.C.A., Local Government Code § 102.007.

Sec. 8.11. Effective date of budget; certification; copies made available.

Upon final adoption, the budget shall be in effect for the fiscal year. A copy of the budget as finally adopted, shall be filed with the person performing the duties of City Secretary and the County Clerk of Harris County. Copies of the final budget shall be posted for the public at the office of the City Secretary and at two other public locations within the corporate limits of the City. Copies of the budget may be obtained by the public at the City Hall.

(Rev. of 5-6-1995; Rev. of 5-10-2014, amd. no. 26(8.11))

State law reference— Approved budget filed with municipal clerk, posting on internet, V.T.C.A., Local Government Code § 102.008.

Sec. 8.12. Budgetary amendments.

From the effective date of the budget, any budgetary amendments shall be made in accordance with State and Federal laws and the Constitution of the State of Texas.

(Rev. of 5-6-1995)

State law reference— Changes in budget for municipal purposes, V.T.C.A., Local Government Code § 102.010.

Sec. 8.13. Budget established amount to be raised by property tax.

From the effective date of the budget, the established amount to be raised by property tax shall in no event exceed the legal limit provided by State and Federal laws and the Constitution of the State of Texas.

(Rev. of 5-6-1995)

State law reference— Levy of taxes, V.T.C.A., Local Government Code § 102.009.

Sec. 8.14. Estimated expenditures shall not exceed estimated resources.

The total estimated expenditures of the general fund and debt service fund shall not exceed the total estimated resources of each fund. The classification of revenue and expenditure accounts shall conform as nearly as local conditions will permit to the uniform classification as promulgated by the Governmental Accounting Standards Board or some other nationally accepted classifications.

(Rev. of 5-6-1995)

State law reference— Expenditure of funds, V.T.C.A., Local Government Code § 102.009.

Sec. 8.15. Emergency appropriation.

At any time in any fiscal year, the Council may, pursuant to this section, make emergency appropriations to meet a pressing need for public expenditure, for other than recurring requirements, to protect the public health, safety or welfare. Such appropriations shall be by ordinance adopted at a special or regular meeting by the majority vote of the Council.

(Rev. of 5-6-1995)

State law reference— Emergency expenditure, V.T.C.A., Local Government Code § 102.009.

Sec. 8.16. Purchase procedure.

All purchases made and contracts executed by the City shall be pursuant to the laws established by the State of Texas.

(Rev. of 5-6-1995)

State law reference— Competitive bidding, V.T.C.A., Local Government Code § 252.021 et seq.; exemptions, V.T.C.A., Local Government Code §§ 252.022, 252.023.

Sec. 8.17. Disbursement of funds.

All checks, vouchers or warrants for the withdrawal of money from the City Depository shall be signed by the City Manager and countersigned by the City Secretary or the Finance Director. In the absence of the City Manager, the Mayor, or the Mayor Pro-Tem in the absence of the Mayor, may sign.

(Rev. of 5-6-1995; Rev. of 5-10-2014, amd. no. 27(8.17))

State law reference— Drawing of checks and warrants, V.T.C.A., Local Government Code § 105.074; checks payable at depository, V.T.C.A., Local Government Code § 105.075; debts payable other than at municipal treasury, V.T.C.A., Local Government Code § 105.076.

Sec. 8.18. Power to tax.

The Council shall have the power, and is hereby authorized to levy and collect an annual tax upon all real and personal property within the City not to exceed the maximum limits set by the Constitution and laws of the State of Texas.

(Rev. of 5-6-1995)

Sec. 8.19. Property subject to tax; rendition, appraisal and assessment.

All real, tangible and intangible personal property within the jurisdiction of the City of Tomball not expressly exempted by law, shall be subject to annual taxation. The method and procedures for the rendition, appraisal and assessment of all real and personal property within the City shall be in accordance with applicable provisions of the Property Tax Code of the State of Texas.

(Rev. of 5-6-1995)

Sec. 8.20. Taxes, when due and payable.

All taxes due the City shall be payable on receipt of the tax bill and shall be considered delinquent if not paid before February 1 of the year following the year in which imposed. The postponement of any delinquency date and the amount of penalty, interest and costs to be imposed on delinquent taxes shall be in accordance with applicable ordinances of the City and the Property Tax Code of the State of Texas."

(Rev. of 5-6-1995; Rev. of 5-10-2014, amd. no. 28(8.20))

Sec. 8.21. Tax liens.

A. A special lien in favor of the City is hereby created on all real, personal and mixed property in the City for all unpaid taxes. The priority of said lien shall be determined in accordance with state law.

B. All seizure and foreclosure proceedings shall be administered in accordance with State property tax codes.

(Rev. of 5-6-1995; Rev. of 5-10-2014, amd. no. 29(8.21); Ord. No. 2014-14, § 6, 6-16-2014)

Sec. 8.22. Tax remission and discounts.

Except as provided by State law, neither the Council or any other official of the City shall ever extend the time for payment of taxes nor remit, discount or compromise any tax legally due the City, nor waive the penalty, interest and costs that may be due thereon to or for any person, association, corporation, firm or partnership owing taxes to the City for such year or years.

(Rev. of 5-6-1995)

Sec. 8.23. Issuance of bonds.

The City shall have the power to issue bonds and levy a tax to support the issue for permanent improvements and all other lawful purposes.

A. *General Obligation Bonds.* The City shall have the power to borrow money on the credit of the City and to issue general obligation bonds for permanent public improvements or for any other public purpose not prohibited by the Constitution and laws of the State of Texas and to issue refunding bonds to refund outstanding bonds of the City previously issued. All such bonds shall be issued in conformity with the laws of the State of Texas and shall be used only for the purpose for which they were issued.

B. *Revenue Bonds.* The City shall have the power to borrow money for the purpose of constructing, purchasing, improving, extending or repairing of public utilities, recreational facilities or any other self-liquidating municipal function not prohibited by the Constitution and Laws of the State of Texas and to issue revenue bonds to evidence the obligation created thereby, and to issue refunding bonds to refund outstanding revenue bonds of the City previously issued. All such bonds shall be issued in conformity with the laws of the State of Texas and shall be used only for the purpose for which they were issued.

C. *Sale of Bonds.* No bonds, other than refunding bonds issued to refund and in exchange of previously issued outstanding bonds, issued by the City shall be sold for less than par value and accrued interest. All bonds of the City having been issued or sold in accordance with the terms of this section and having been delivered to the purchasers thereof shall thereafter be incontestable and all bonds issued to refund and in exchange of outstanding bonds previously issued shall, after said exchange, be incontestable.

(Rev. of 5-6-1995)

State law reference— Specific authority for municipalities to issue securities, V.T.C.A., Government Code ch. 1501 et seq.

Sec. 8.24. Independent audit.

Prior to the end of each fiscal year, the Council shall designate a certified public accountant, who is licensed by the State of Texas, to make an independent audit of accounts and other evidences of financial transactions of the City government and submit a report to the Council within one hundred eighty (180) days from the closing date of the City's fiscal year. Notice shall be given by publication in the official newspaper of the City that the annual audit is on file at the City Hall for inspection.

Such accountant shall have no personal interest, direct or indirect, in the fiscal affairs of the City government. The accountant shall not maintain any accounts or records of the City business, but, within specifications approved by the Council, shall post audit the books and documents kept by the Finance Director and any separate or subordinate accounts kept by any other office, department or agency of the City.

(Rev. of 5-6-1995; Rev. of 5-10-2014, amd. no. 30(8.24))

State law reference— Audit of municipal finances, V.T.C.A., Local Government Code § 103.001 et seq.

FOOTNOTE(S):

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State Law reference— Finances, V.T.C.A., Local Government Code ch. 101 et seq. (Back)

ARTICLE IX. FRANCHISE AND PUBLIC UTILITIES [6]

Sec. 9.01. Power to grant franchise.

Sec. 9.02. Franchise value not to be allowed.

Sec. 9.03. Right of regulation.

Sec. 9.04. Grant not to be exclusive.

Sec. 9.05. Other conditions.

Sec. 9.06. Accounts of municipally-owned utilities.

Sec. 9.07. Sales of municipal utilities.

Sec. 9.08. Regulation of rates and utilities.

Sec. 9.01. Power to grant franchise.

Council shall have power by ordinance to grant, amend, renew and extend all franchises of all public utilities of every type operating with the City. All such ordinances granting, amending, renewing, or extending franchises for public utilities shall be governed by the procedures established in Section 6.14. No public utility franchise shall be granted for a term of more than twenty (20) years, nor be transferable except with the approval of the Council expressed by ordinance.

(Rev. of 5-6-1995; Rev. of 5-10-2014, amd. no. 31(9.01)

Sec. 9.02. Franchise value not to be allowed.

In fixing reasonable rates and charges for utility service within the City and in determining the just compensation to be paid by the City for public utility property which the City may acquire by condemnation or otherwise, nothing shall be included as the value of any franchise granted by the City under this Charter.

(Rev. of 5-6-1995)

Sec. 9.03. Right of regulation.

Every grant, renewal, extension or amendment of a public utility franchise, whether so provided in the ordinance or not, shall be subject to the right of the City unless Federal or State law dictates otherwise:

A. To forfeit any such franchise by ordinance at any time for failure of the holder thereof to comply with the terms of the franchise. Such power shall be exercised only after written notice to the franchise holder stating wherein the franchise holder has failed to comply with the terms of the franchise and setting a reasonable time for the correction of such failure, and shall be exercised after such reasonable time has expired.

B. To impose reasonable regulations to insure safe, efficient and continuous service to the public.

C. To require such expansion, extension, enlargement and improvement of plants and facilities as are necessary to provide adequate service to the public.

D. To require every franchise holder to furnish to the City, without cost to the City, full information regarding the location, character, size, length and terminals of all facilities of such franchise holder in, over and under the streets, alleys and other public properties of the City, and to regulate and control the location, relocation and removal of such facilities.

E. To collect from every public utility operating in the City such proportion of the expense of excavating, grading, paving, repaving, constructing, reconstructing, draining, repairing, maintaining, lighting, sweeping and sprinkling the streets, alleys, bridges, culverts, viaducts and other public places of the City which represent the increased cost of such operation resulting from the occupancy of such public places by such public utility, and such proportion of that cost of such operations as results from the damage to or the disturbance of such public places caused by such public utility; or to compel such public utility to perform, at its own expense, such operations as above listed which are made necessary by the occupancy of such public places by such utility or by damage to or disturbance of such public places caused by such public utility.

F. To require every franchise holder to allow other public utilities to use its poles and other facilities, including bridges and viaducts, whenever in the judgment of the Council such use shall be in the public interest, provided that in such an event, a reasonable rental shall be paid such owner of the facilities for such use. Provided further, that inability of such public utilities to agree upon rental facilities shall not be an excuse for failure to comply with such requirement by the Council.

G. To require the keeping of accounts in such form as will accurately reflect the value of the property of each franchise holder which is used and useful in rendering its service to the public and the expenses, receipts and profits of all kind of such franchise holder.

H. To examine and audit at any time during business hours the accounts and other records of any franchise holder.

I. To require reports on the operation of the utility, which shall be in such form and contain such information as the Council shall prescribe.

J. To require that the public utility give notice to any subscriber to its service prior to the permanent or temporary discontinuance or disruption of such service by the public utility, except in cases of emergency, and to require that no officer, agent, servant or employee of the public utility nor any vehicles or equipment under their control shall make use of, go upon or across any private property in the City without first obtaining the permission of the owner or occupant of such property, except in cases of emergency, and to provide a penalty for the violation of such requirements.

K. To impose such other reasonable regulations, restrictions, requirements and conditions as may be deemed necessary or desirable to promote the health, safety, welfare or accommodations of the public.

L. No franchise shall be transferable except with the approval of the Council as expressed by ordinance. The term "transferable", as used herein, shall not be construed in such a manner as to prevent the franchise from pledging said franchise as security for a valid debt or mortgage.

(Rev. of 5-6-1995)

Sec. 9.04. Grant not to be exclusive.

No grant of franchise to construct, maintain or operate a public utility and no renewal or extension of such grant shall be exclusive.

(Rev. of 5-6-1995)

Sec. 9.05. Other conditions.

All franchises heretofore granted are recognized as contracts between the City and the grantee, and the contractual rights as contained in any such franchise shall not be impaired by the provisions of this Charter except that the power of the City to exercise the rights of eminent domain in the acquisition of any utility property is in all things reserved, and except the general power of the City heretofore existing and herein provided for to regulate the rates and services of a utility, which shall include the right to require adequate and reasonable quality of utility service to the public. Every public utility franchise hereafter granted shall be held subject to all the terms and conditions contained in the various sections of this Article whether or not such terms are specifically mentioned in the franchises. Nothing in this Charter shall operate to limit in any way, as specifically stated, the discretion of the Council or the voters of the City in imposing terms and conditions as may be reasonable in connection with any franchise grant, including the right to require such compensation or rental as may be permitted by the laws of the State of Texas and the United States of America.

(Rev. of 5-6-1995)

Sec. 9.06. Accounts of municipally-owned utilities.

Accounts shall be kept for each public utility owned or operated by the City in such manner as to show the true and complete financial results of such City ownership and operation, including all assets and all liabilities, appropriately subdivided by classes, depreciation reserve, other reserves and surplus; also revenues, operating expenses including depreciation, interest payment, rental and other disposition

of annual income, the accounts shall show actual capital cost to the City of each public utility owned; the cost of all extensions, additions and improvements and the source of funds expended for such capital purposes. They shall show as nearly as possible the cost of any service furnished to or rendered by any such utility to any City Government Department. The Council shall cause an annual report to be made by a Certified Public Accountant giving the information specified in this section and such other data as the Council shall deem expedient.

(Rev. of 5-6-1995)

Sec. 9.07. Sales of municipal utilities.

The Council shall have the power and authority to:

A. Sell and distribute water, sell and provide sewer services, sell and distribute natural gas, provide for garbage and trash collection and disposition, and provide similar services within the Corporate limits of the City or its extraterritorial jurisdiction (ETJ).

B. Prescribe the types of materials used within or beyond the limits of the City for such municipal services, inspect the same and require such materials to be kept in good order and condition at all times, make such rules and regulations as shall be necessary and proper and prescribe penalties for noncompliance with same.

(Rev. of 5-6-1995)

Sec. 9.08. Regulation of rates and utilities.

The Council shall have full power, after notice and hearing, to regulate by ordinance, subject to Federal and State laws, the rates of every public utility operating in the City provided that no such ordinance shall be passed as an emergency measure. The City shall have power to employ, at the expense of the Grantee, expert assistance and advice in determining a reasonable rate and equitable profit to the Grantee. This Charter does not revoke any existing City Ordinance that has waived the right of rate regulation by the City to the Public Utility Commission of the State of Texas.

(Rev. of 5-6-1995; Rev. of 5-10-2014, amd. no. 32(9.08))

FOOTNOTE(S):

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State Law reference— Water and utilities, V.T.C.A., Local Government Code ch. 401 et seq. (Back)

ARTICLE X. MUNICIPAL PLANNING [7]

Sec. 10.01. Planning and Zoning Commission.

Sec. 10.02. Platting of property.

Sec. 10.03. Development of property.

Sec. 10.01. Planning and Zoning Commission.

The Council shall appoint a City Planning and Zoning Commission, consisting of five (5) members, who shall be residents of the City but who shall not be employees of the City.

A. *Term of Office.* The members of the Commission shall be appointed for three (3) year, staggered terms.

B. *Rules of Procedure.* The Commission shall annually elect one (1) of its number Chairman and shall establish its own rules of procedure which shall include the following: A quorum shall consist of a majority of the members of the Commission and an affirmative vote of a majority of those present shall be necessary to pass upon pending questions. All meetings shall be open to the public and a record of all proceedings shall be maintained by the person performing the duties of the City Secretary and shall be a public record.

C. *Vacancies.* Members of the Commission shall actively participate in the activities of the Commission, and any member who is absent from three (3) consecutive meetings of the Commission without valid excuse as determined by the Commission, shall automatically be dismissed from membership. The Commission shall at once notify the Council that a vacancy in the Commission exists. Vacancies occurring in the Commission, for whatever reason, shall be filled within thirty (30) days by appointment by the Council for the remainder of the unexpired term.

D. *Powers and Duties.* The Commission shall have the power and shall be required to:

(1) Recommend to the Council amendments, extensions and additions to the Master Plan for the physical development of the City.

(2) Recommend to the Council the approval or the disapproval of plats of proposed subdivisions submitted in accordance with City ordinance as adopted or hereafter amended.

(3) Recommend to the Council plans for the clearance and rebuilding of slum districts and blighted areas which may develop within the City.

(4) Recommend to the Council the amendment, extension and revision of the Building Code, which code shall include the minimum standards of construction for building, the minimum standards for plumbing and the minimum standards for electrical and mechanical equipment.

(5) Submit annually to the City Manager, not less than ninety (90) days prior to the beginning of the budget year, a list of recommendations for capital improvements which, in the opinion of the Commission, are necessary or desirable to be constructed during the forthcoming five (5) years. Such list shall be arranged in order of preference, with recommendations as to which projects shall be constructed in which year.

(6) Meet no less than once each quarter, meetings to be held at the City Hall unless prior notice of change of meeting place be given by publication in a newspaper in general circulation in the City.

(7) Operate under the guidelines of the powers granted by the Civil Statutes of the State of Texas.

E. *Liaison with City Council.* The City Manager or his representative shall attend the meetings of the Commission and shall serve as liaison between the Commission and the Council.

(Rev. of 5-6-1995; Rev. of 5-10-2014, amd. no. 33(10.01))

Sec. 10.02. Platting of property.

Every owner of any tract of land situated within the corporate limits of the City or its extraterritorial jurisdiction (ETJ), who may divide the same into two or more parts for the purpose of laying out any subdivisions or any addition to the City shall comply with all applicable provisions contained in the Code of Ordinances of the City, as adopted or hereafter amended.

(Rev. of 5-6-1995)

State law reference— Extraterritorial jurisdiction of municipalities, V.T.C.A., Local Government Code ch. 42; municipal regulation of subdivisions, V.T.C.A., Local Government Code ch. 212; extraterritorial jurisdiction of municipalities in counties that regulate subdivisions, V.T.C.A., Local Government Code ch. 242; recording of plats, V.T.C.A., Property Code § 12.002; extension of subdivision rules to extraterritorial jurisdiction, V.T.C.A., Local Government Code § 212.003; municipal annexation, V.T.C.A., Local Government Code ch. 43.

Sec. 10.03. Development of property.

The Council shall cooperate in every manner possible with persons interested in the development of property within the corporate limits of the City or its extraterritorial jurisdiction (ETJ). No expenditure of public funds, however, shall be authorized for the development of privately-owned subdivisions situated within or beyond the corporate limits of the City, except for the extension of utilities or services to such areas.

(Rev. of 5-6-1995)

State law reference— Municipal regulation of subdivisions and property development, V.T.C.A., Local Government Code ch. 212.

FOOTNOTE(S):

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State Law reference— Planning and development, V.T.C.A., Local Government Code ch. 371 et seq. (Back)

ARTICLE XI. RECALL OF OFFICERS

Sec. 11.01. General power.

Sec. 11.02. Scope of recall.

Sec. 11.03. Petition for recall.

Sec. 11.04. Form of recall petition.

Sec. 11.05. Various papers constituting petition.

Sec. 11.06. Presentation of petition to City Council.

Sec. 11.07. Public hearing to be held.

Sec. 11.08. Election to be called.

Sec. 11.09. Failure of City Council to call an election.

Sec. 11.10. Ballots in recall election.

Sec. 11.11. Result of recall election.

Sec. 11.12. Recall, restrictions thereof.

Sec. 11.01. General power.

The qualified voters of the City, in addition to the method of legislation herein provided, shall have the power of direct legislation by recall vote.

(Rev. of 5-6-1995)

Sec. 11.02. Scope of recall.

Any elected City official, elected to office by the qualified voters of the City, shall be subject to recall and removal from office by the qualified voters of the City on grounds of incompetency, misconduct or malfeasance in office.

(Rev. of 5-6-1995)

Sec. 11.03. Petition for recall.

Before the question of recall of such officers shall be submitted to the qualified voters of the City, a petition demanding such question to be so submitted shall first be filed with the person performing the duties of City Secretary; which said petition shall be signed by qualified voters of the City equal in number to at least thirty percent (30%) of the number of votes cast at the last regular municipal election of the City, for the position in question, but in no such event less than one hundred seventy-five (175) petitioners. Each signer of such recall petition shall personally sign his name thereto in ink, and shall write after his name, his place of residence, giving name of street and number. He shall also write thereon his voter registration number, and the day, month and year his signature was affixed.

(Rev. of 5-6-1995)

Sec. 11.04. Form of recall petition.

The recall petition must be addressed to the Council of the City, must distinctly and specifically point out the ground or grounds upon which such petition for removal is predicated, and if there be more than one ground, such as for incompetency, misconduct or malfeasance in office, shall specifically state each ground with such certainty as to give the officer sought to be removed notice of the matters and things with which he is charged. One of the signers of each separate petition shall make a notarized affidavit that he, and he only, personally circulated such petition, and that each signature appended thereto was made in his presence and is the genuine signature of the person whose name it purports to be.

(Rev. of 5-6-1995)

Sec. 11.05. Various papers constituting petition.

The petition may consist of one or more copies, and the several parts of copies of the petition may be filed separately and by different persons; but no signature to such petition shall remain effective or be counted which was placed thereon more than forty-five (45) days prior to the filing of such petition or petitions with the person performing the duties of City Secretary. All papers comprising a recall petition shall be filed with the person performing the duties of City Secretary on the same day, and the said City Secretary shall immediately notify, in writing, the officer so sought to be removed by mailing such notice by Certified Mail to his Tomball mailing address.

(Rev. of 5-6-1995)

Sec. 11.06. Presentation of petition to City Council.

Within five business days after the date of the filing of the papers constituting the recall petition, the person performing the duties of City Secretary shall certify such petition or return same to petitioners for correction. After certification, the person performing the duties of City Secretary shall present such petition to the Council of the City at the next regular meeting.

(Rev. of 5-6-1995)

Sec. 11.07. Public hearing to be held.

The officer whose removal is sought may, within five business days after such recall petition has been presented to the Council, request that a public hearing be held to permit him to present facts pertinent to the charges specified in the recall petition. In this event, the Council shall order such public hearing to be held not less than five business days, nor more than 15 days, after receiving such request for a public hearing.

(Rev. of 5-6-1995)

Sec. 11.08. Election to be called.

If the officer whose removal is sought does not resign, then it shall become the duty of the Council to order an election and fix a date for holding such recall election, in accordance with State law.

(Rev. of 5-6-1995; Rev. of 5-10-2014, amd. no. 34(11.08))

Sec. 11.09. Failure of City Council to call an election.

In case all the requirements of this Charter shall have been met and the Council shall fail or refuse to receive the recall petition, or to order such recall election or to discharge any other duties imposed upon the Council by the provisions of this Charter with reference to such recall, then the petitioner shall have the right to file an action in an appropriate court to obtain a writ of mandamus or other relief requiring the Council to call the election.

(Rev. of 5-6-1995)

Sec. 11.10. Ballots in recall election.

Ballots used at recall elections shall conform to the following requirements:

A. With respect to each person whose removal is sought, the question shall be submitted:

"Shall (name of person) be removed from the office of (name of office) by recall?"

B. Immediately below each such question, therefore, shall be printed the following words, one above the other, in the order indicated:

"Yes"

"No."

(Rev. of 5-6-1995)

Sec. 11.11. Result of recall election.

If a majority of the votes cast at a recall election shall be "NO," that is against the recall of the person named on the ballot, he shall continue in office for the remainder of his unexpired term, subject to recall as before.

If a majority of the votes cast as such election be "YES," that is for recall of the person named on the ballot, he shall be deemed removed from office, and the vacancy shall be filled as vacancies in the Council are filled, as provided in Section 6.09.

(Rev. of 5-6-1995)

Sec. 11.12. Recall, restrictions thereof.

No recall petition shall be filed against any officer of the City within three months after his election nor within (3) months after an election for such officer's recall.

(Rev. of 5-6-1995)

ARTICLE XII. LEGISLATION BY THE PEOPLE, INITIATIVE AND REFERENDUM

Sec. 12.01. General power.

Sec. 12.02. Initiative.

Sec. 12.03. Referendum.

Sec. 12.04. Voluntary submission of legislation by the Council.

Sec. 12.05. Form of ballots.

Sec. 12.06. Publication of proposed and referred ordinances.

Sec. 12.07. Adoption of ordinances.

Sec. 12.08. Inconsistent ordinances.

Sec. 12.09. Ordinances passed by popular vote, repeal or amendment.

Sec. 12.10. Further regulation by the Council.

Sec. 12.11. Franchise ordinances.

Sec. 12.01. General power.

The qualified voters of the City, in addition to the method of legislation hereinbefore provided, shall have the power of direct legislation by initiative and referendum.

(Rev. of 5-6-1995)

Sec. 12.02. Initiative.

Qualified voters of the City may initiate legislation by submitting a petition addressed to the Council which requests the submission of a proposed ordinance or resolution to a vote of the qualified voters of the City. Said petition must be signed by qualified voters of the City equal in number to thirty percent (30%) of the average of the highest number of votes cast at the last three regular municipal elections for council place or Mayor of the City, or two hundred fifty (250) qualified voters whichever is greater, and each copy of the petition shall have attached to it a copy of the proposed legislation. Each signer of such petition shall personally sign and print his name thereto in ink, and write his place of residence, giving name of street and number. He shall also write thereon his voter registration number and the day, month, and year his signature was affixed. The petition may consist of one or more notarized copies as permitted in Section 11.05 of this Charter. Such petition shall be filed with the person performing the duties of City Secretary. Within five business days after the filing of such petition, the person performing the duties of City Secretary shall certify such petition or return same to petitioners for corrections. After certification, the person performing the duties of City Secretary shall present said petition and proposed ordinance or resolution to the Council at the next regular meeting. Upon presentation to the Council of the petition and draft of the proposed ordinance or resolution, it shall become the duty of the Council, on or before the next regularly scheduled meeting of the Council, to pass and adopt such ordinance or resolution without alteration as to meaning or effect in the opinion of the persons filing the petition to call a special election on the next uniform election date as provided by the State Election Code, at which the qualified voters of the City shall vote on the question of adopting or rejecting the proposed legislation. No ordinance shall be proposed by an initiative petition which is on the same question as an ordinance so submitted and defeated at an election held within the preceding 12 months.

(Rev. of 5-6-1995)

Sec. 12.03. Referendum.

Qualified voters of the City may require that any ordinance or resolution, with the exception of ordinances or resolutions levying taxes, issuing tax or revenue bonds or relating to annexation or franchises, passed by the Council, be submitted to the voters of the City for approval or disapproval, by submitting a petition for this purpose within 30 days after final passage of said ordinance or resolution or within 30 days after its publication. Said petition shall be addressed, prepared, signed and certified as required for petitions initiating legislation, as provided in Section 12.02 of this Charter and shall be submitted to the person performing the duties of City Secretary. Immediately upon the filing of such petition, the City Secretary shall present said petition to the Council. The Council shall immediately reconsider such ordinance or resolution and, if it does not entirely repeal the same, shall submit it to the voters as provided in Section 12.02 of this Charter. Pending the holding of such election, such ordinance or resolution shall be suspended from taking effect and shall not later take effect unless a majority of the qualified voters voting thereon at such election shall vote in favor thereof.

(Rev. of 5-6-1995)

Sec. 12.04. Voluntary submission of legislation by the Council.

The Council, by majority vote, may submit to the voters any ordinance, resolution or measure for adoption, rejection or repeal in the same manner and with the same force and effect as provided in this Article. A special election may be called for this purpose, if necessary, as provided in Section 12.02.

(Rev. of 5-6-1995)

Sec. 12.05. Form of ballots.

The ballots used, when voting upon such proposed and referred ordinances, resolutions or measures, shall set forth their nature sufficiently to identify them and shall set forth upon separate lines, the words:

"FOR THE ORDINANCE" and

"AGAINST THE ORDINANCE"; or

"FOR THE RESOLUTION" and

"AGAINST THE RESOLUTION."

(Rev. of 5-6-1995)

Sec. 12.06. Publication of proposed and referred ordinances.

The person performing the duties of City Secretary shall publish at least once in a newspaper of general circulation in the City, a caption of the proposed or referred ordinance or resolution within 15 days before the date of the election, and shall give other notices and do such things relative to such elections as are required in general municipal elections or by the ordinance or resolution calling said election. Entire and complete copies of the proposed or referred ordinance shall be made available to any citizen upon request.

(Rev. of 5-6-1995)

Sec. 12.07. Adoption of ordinances.

If a majority of the qualified voters voting on any proposed ordinance, resolution or measure shall vote in favor thereof, it shall thereupon, or at any time fixed therein, become effective as a law or as a mandatory order to the Council.

(Rev. of 5-6-1995)

Sec. 12.08. Inconsistent ordinances.

If the provisions of two or more proposed ordinances or resolutions approved at the same election are inconsistent, the ordinance or resolution receiving the highest number of votes shall prevail.

(Rev. of 5-6-1995)

Sec. 12.09. Ordinances passed by popular vote, repeal or amendment.

No ordinances or resolutions which may have been passed by the Council upon a petition or adopted by popular vote under the provisions of this Article shall be repealed or amended except by the Council in response to a referendum petition or by submission as provided in Section 12.03 of this Charter.

(Rev. of 5-6-1995)

Sec. 12.10. Further regulation by the Council.

The Council may pass ordinances or resolutions providing other and further regulations for carrying out the provisions of this Article consistent herewith.

(Rev. of 5-6-1995)

Sec. 12.11. Franchise ordinances.

Nothing contained in this Article shall be construed to be in conflict with any of the provisions of Article IX of this Charter, pertaining to ordinances granting franchise when valuable rights shall have accrued thereunder.

(Rev. of 5-6-1995)

CHARTER COMPARATIVE TABLE

This table shows the location of the sections of the basic Charter and any amendments thereto.

Ordinance Number	Date	Section	Section this Charter
	5- 6-1995 (Rev.)		Preamble
			1.01
			1.02
			1.03
			1.04
			1.05
			2.01
			2.02
			2.03
			2.04
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			12.10
			12.11
		amd. no. 5(1.10)	1.06
		amd. no. 6(3.07)	3.07
		amd. no. 7(5.01)	5.01
		amd. no. 8(5.03)	5.03
		amd. no. 9(5.06)	5.06
		amd. no. 10(6.02)	6.02
		amd. no. 11(6.03)	6.03
		amd. no. 12(6.09)	6.09
		amd. no. 13(6.12)	6.12
		amd. no. 14(6.14)	6.14
		amd. no. 15(7.01)	7.01
		amd. no. 16(7.03)	7.03
		amd. no. 17(7.04)	7.04
		amd. no. 18(7.05)	7.05
		amd. no. 20(7.07)	7.06
		amd. no. 21(7.09)	7.08
		amd. no. 22(7.10)	7.09
		amd. no. 23(7.12)	7.11

		amd. no. 25(8.02)	8.02
		amd. no. 26(8.11)	8.11
		amd. no. 27(8.17)	8.17
		amd. no. 28(8.20)	8.20
		amd. no. 29(8.21)	8.21
		amd. no. 30(8.24)	8.24
		amd. no. 31(9.01	9.01
		amd. no. 32(9.08)	9.08
		amd. no. 33(10.01)	10.01
		amd. no. 34(11.08)	11.08
2014-14	6-16-2014	2	1.05, 1.06
		3	6.02
		4	7.01
		5	7.06—7.11
		6	8.21

PART II CODE OF ORDINANCES

Chapter 1 - GENERAL PROVISIONS

Chapter 2 - ADMINISTRATION

Chapter 3 - RESERVED

Chapter 4 - ALCOHOLIC BEVERAGES

Chapter 5 - RESERVED

Chapter 6 - AMUSEMENTS AND ENTERTAINMENTS

Chapter 7 - RESERVED

Chapter 8 - ANIMALS

Chapter 9 - RESERVED

Chapter 10 - BUILDINGS AND BUILDING REGULATIONS

Chapter 11 - RESERVED

Chapter 12 - ELECTIONS

Chapter 13 - RESERVED

Chapter 14 - EMERGENCY MANAGEMENT

Chapter 15 - RESERVED

Chapter 16 - EMERGENCY SERVICES

Chapter 17 - RESERVED

Chapter 18 - ENVIRONMENT

Chapter 19 - RESERVED

Chapter 20 - FIRE PREVENTION AND PROTECTION

Chapter 21 - RESERVED

Chapter 22 - HEALTH AND SANITATION

Chapter 23 - RESERVED

Chapter 24 - LAW ENFORCEMENT

Chapter 25 - RESERVED

Chapter 26 - MANUFACTURED HOMES, MOBILE DWELLING STRUCTURES, AND RECREATIONAL VEHICLES

Chapter 27 - RESERVED

Chapter 28 - MUNICIPAL COURT

Chapter 29 - RESERVED

Chapter 30 - OFFENSES

Chapter 31 - RESERVED

Chapter 32 - PEDDLERS AND SOLICITORS

Chapter 33 - RESERVED

Chapter 34 - SIGNS

Chapter 35 - RESERVED

Chapter 36 - SOLID WASTE

Chapter 37 - RESERVED

Chapter 38 - STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

Chapter 39 - RESERVED

Chapter 40 - SUBDIVISIONS

Chapter 41 - RESERVED

Chapter 42 - TAXATION

Chapter 43 - RESERVED

Chapter 44 - TRAFFIC AND VEHICLES

Chapter 45 - RESERVED

Chapter 46 - UTILITIES

Chapter 47 - RESERVED

Chapter 48 - VEHICLES FOR HIRE

Chapter 49 - RESERVED

Chapter 50 - ZONING

Chapter 1 GENERAL PROVISIONS

Sec. 1-1. How Code designated and cited.
Sec. 1-2. Rules of construction and definitions.
Sec. 1-3. Incorporation by reference.
Sec. 1-4. Parenthetical and reference matter.
Sec. 1-5. Catchlines of sections.
Sec. 1-6. Reference to Code; conflicts.
Sec. 1-7. Amendatory language for Code.
Sec. 1-8. Addition of new material to Code.
Sec. 1-9. Effect of Code amendments.
Sec. 1-10. Repeal of Code provisions.
Sec. 1-11. Supplementation of Code.
Sec. 1-12. Police power extended to city property.
Sec. 1-13. Altering Code.
Sec. 1-14. General penalty for violations of Code; continuing violations.
Sec. 1-15. Severability of parts of Code.
Sec. 1-16. Effect of repeals.
Sec. 1-17. Miscellaneous ordinances not affected by Code.

Sec. 1-1. How Code designated and cited.

The chapters, articles, divisions and sections embraced in this Code shall constitute and be designated as the "Code of Ordinances, City of Tomball, Texas" and may be so cited. This Code may also be cited as the "Tomball City Code."

(Code 1978, § 1-1; Code 1993, § 1-1)

State law reference— Authority to adopt code of ordinances, V.T.C.A., Local Government Code § 53.001 et seq.

Sec. 1-2. Rules of construction and definitions.

In the construction of this Code and of all ordinances of this city, the following rules of construction and definitions shall be observed, unless such construction or definition would be inconsistent with the manifest intent of the city council, would be repugnant to the context of the provisions or the context clearly requires otherwise.

Agencies or officers. Any reference to any federal, state or local agency or officer shall include any successor agency or officer.

City. The term "city" means the City of Tomball in the County of Harris in the State of Texas.

City council. The term "city council" means the governing body of the city.

Code. The term "Code" means this Code of Ordinances as designated and cited in section 1-1 above.

Computation of time. In computing a period of days, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday. If a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month of the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period ends on the last day of that month.

State law reference— Similar provisions, V.T.C.A., Government Code § 311.014.

County. The term "county" means the County of Harris or the County of Montgomery in the State of Texas as the context requires.

Delegation of authority. Whenever a provision appears in this Code requiring an officer of the city to do some act or make certain inspections, it is to be construed to authorize such officer to designate, delegate and authorize subordinates to perform the required act or make the required inspection unless the terms of the provision or section expressly designate otherwise.

Easement. The term "easement" means a right, liberty, privilege or advantage without profit which the owner of one parcel of land may have in the lands of another, and also includes a right in the owner of one parcel of land, by reason of such ownership, to use the land of another for a special purpose not inconsistent with a general property right of the owner.

Gender. A term importing the masculine gender only shall extend and be applied to females and to firms, partnerships, associations and corporations as well as to males.

Generally. The term "generally" means all terms and phrases shall be construed and understood according to the common and approved usage of language; but technical terms and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning.

In the city or *in this city.* The term "in the city" or "in this city" means and includes any territory within the corporate limits of this city and the police jurisdiction thereof, and any other territory over which regulatory power has been conferred on the city by general or special act, except as otherwise specified.

Joint authority. The term "joint authority" means terms purporting to give authority to three or more officers or other persons shall be construed as giving such authority to a majority of such officers or other persons, unless it is otherwise specifically declared.

Law. The term "law" means any statute, ordinance or regulation promulgated by the United States, the state, the county, the city or any agency thereof, as well as the rules and regulations of other bodies politic that may be appropriate.

Month. The term "month' means a calendar month.

Number. The term "number" means any term importing the singular number shall include the plural, and any term importing the plural number shall include the singular.

Oath. The term "oath" means and includes an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed."

Official time standard. Whenever certain hours are named in this Code, they shall mean Standard Time or Daylight Saving Time as may be in current use in the city.

Officials, employees, boards, commissions, etc. Whenever reference is made to officials, employees, boards, commissions or other agencies of the city by title only (i.e., "mayor," "secretary," "manager,"

"chief of police," etc.), they shall be deemed to refer to the officials, employees, boards, commissions or other agencies of this city.

Or, and. The term "or" may be read "and" and the term "and" may be read "or," if the context of the provision requires it.

Owner. The term "owner" means and includes, when applied to a building or land, any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety of the whole or of a part of such building or land.

Person. The term "person" means and includes, and may be applied to, a firm, partnership, association, corporation, organization, club, society, group acting as a unit, or body politic and corporate, as well as to an individual.

Personal property. The term "personal property" means and includes money, goods, chattels, and evidences of debt, things in action, and any other species of property, except real property.

Preceding or *following.* The term "preceding" or "following" means next before and next after, respectively.

Property. The term "property" means and includes real, personal and mixed property.

Public place. The term "public place" means any public way, park, cemetery, school yard or open space adjacent thereto; any public lake or stream; and any place or business open to the use of the public in general, open to public view or to which the public has access.

Public way. The term "public way" means any street, alley, boulevard, parkway, highway, sidewalk or other public thoroughfare.

Real property. The term "real property" means and includes lands, tenements and hereditaments.

Reasonable time. In all cases where any section of this Code or city ordinance shall require any act to be done in a reasonable time or reasonable notice to be given, such reasonable time or notice shall be deemed to mean such time only as may be necessary for the prompt performance of such duty, or compliance with such notice.

Residence. The term "residence" means the place adopted by a person as his place of habitation, and to which, whenever he is absent, he has the intention of returning. When a person eats at one place and sleeps at another, the place where such person sleeps shall be deemed to be his residence.

Roadway. The term "roadway" means that portion of a street improved, designed or ordinarily used for vehicular traffic.

Shall, may. The term "shall" is mandatory, and the term "may" is discretionary.

Sidewalk. The term "sidewalk" means any portion of the street between the curb, or the lateral line of the roadway and the adjacent property line intended for the use of pedestrians.

Signature or *subscription.* The term "signature" or "subscription" means and includes a mark when the person cannot write, when his name is written near such mark and is witnessed by a person who writes his own name as witness.

State. The term "state" means the State of Texas.

Street. The term "street" means and includes public streets, avenues, boulevards, highways, roads, alleys, lanes, viaducts, bridges, public ways and approaches thereto and other public thoroughfares in the city devoted to public use.

Tenant or occupant. The term "tenant" or "occupant," when applied to a building or land, means any person who occupies the whole or a part of such building or land, whether alone or with others.

Tense. Terms used in the past or present tense shall include the future as well as the past or present.

V.T.C.A. The term "V.T.C.A." means and refers to the Vernon's Texas Code Annotated, as amended or revised now or in the future.

Writing or *written.* The term "writing" or "written" means and includes any representation of words, letters, symbols or figures; and includes typewriting, printing on paper and any other mode of representing words and letters.

Year. The term "year" means a calendar year.

(Code 1978, § 1-2; Code 1993, § 1-2)

State law reference— General definitions, V.T.C.A., Government Code § 311.005.

Sec. 1-3. Incorporation by reference.

All standard codes, rules, regulations, and other subject matter properly incorporated by reference in this Code, together with subsequent amendments thereto, pursuant to state law, and future incorporations by reference, shall be kept and preserved in the office of the city secretary.

(Code 1978, § 1-4; Code 1993, § 1-3)

Sec. 1-4. Parenthetical and reference matter.

The matter in parentheses at the ends of sections in this Code is for information only and is not a part of this Code. Citations to ordinances indicate only the source of such section and the text may or may not be changed by this Code. Reference matter not in parentheses is for information only and is not a part of this Code.

(Code 1978, § 1-5; Code 1993, § 1-4)

Sec. 1-5. Catchlines of sections.

The catchlines of sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the sections and shall not be deemed or taken to be titles of such sections, nor as any part of any section, nor, unless expressly so provided, shall they be so deemed when any section, including its catchline, is amended or reenacted.

(Code 1978, § 1-6; Code 1993, § 1-5)

Sec. 1-6. Reference to Code; conflicts.

In addition to the rules of construction and definitions specified in this chapter, the following rules shall be observed in the construction of this Code:

(1) All references to chapters, articles or sections are to the chapters, articles and sections of this Code unless otherwise specified.

(2) If the provisions of different chapters of this Code conflict with or contravene each other, the provisions of each chapter shall prevail as to all matters and questions growing out of the subject matter of such chapter.

(3) If conflicting provisions be found in different sections of the same chapter, the provisions of the section which is last in numerical order shall prevail unless such construction would be inconsistent with the meaning of such chapter.

(Code 1978, § 1-7; Code 1993, § 1-6)

Sec. 1-7. Amendatory language for Code.

Amendments to any of the provisions of this Code shall be made by amending such provisions by specific reference to the section of this Code in substantially the following language: "That section _____ of the Code of Ordinances, City of Tomball, Texas, is hereby amended to read as follows:…." The new provisions shall then be set out in full as desired.

(Code 1978, § 2-109; Code 1993, § 1-7)

Sec. 1-8. Addition of new material to Code.

(a) If a new section not heretofore existing in the Code is to be added, the following language may be used: "That the Code of Ordinances, City of Tomball, Texas, is hereby amended by adding a section (or article, chapter or other designation as the case may be), to be numbered _____, which reads as follows:…." The new provisions shall then be set out in full as desired.

(b) In lieu of subsection (a) of this section, when the city council desires to enact an ordinance of a general and permanent nature embracing a subject not previously existing in the Code, which the council desires to incorporate into the Code, a provision in substantially the following language may be made part of such ordinance: "It is the intention of the city council, and it is hereby ordained, that the provisions of this ordinance shall become and be made part of the Code of Ordinances, City of Tomball, Texas, and the sections of this ordinance may be renumbered to accomplish such intention."

(Code 1978, § 2-110; Code 1993, § 1-8)

Sec. 1-9. Effect of Code amendments.

Any and all additions and amendments to this Code, when passed in such form as to indicate the intention of the city council to make the same a part hereof, shall be deemed to be incorporated in this Code so that reference to the "Code of Ordinances, City of Tomball, Texas," shall be understood and intended to include such additions and amendments.

(Code 1978, § 2-107; Code 1993, § 1-9)

State law reference— Ordinances, V.T.C.A., Local Government Code § 51.032.

Sec. 1-10. Repeal of Code provisions.

All sections, articles, chapters or other provisions of this Code desired to be repealed should be specifically repealed by section number, article number, chapter or other number, as the case may be.

(Code 1978, § 2-111; Code 1993, § 1-10)

Sec. 1-11. Supplementation of Code.

(a) By contract or by city personnel, supplements to this Code shall be prepared and printed whenever authorized or directed by the city council. A supplement to the Code shall include all substantive permanent and general parts of ordinances passed by the city council or adopted by initiative and referendum during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.

(b) In preparing a supplement to this Code, all portions of the Code which have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this Code, the codifier, meaning the person, agency or organization authorized to prepare the supplement, may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

(1) Organize the ordinance material into appropriate subdivisions;

(2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the Code printed in the supplement, and make changes in such catchlines, headings and titles;

(3) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers;

(4) Change the term "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections _____ to _____" (inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code); and

(5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted into the Code; but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

(d) The subsequent ordinances as numbered and printed or omitted, in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time that this Code and subsequent ordinances numbered or omitted are readopted as a new code of ordinances by the city council.

(Code 1978, §§ 2-108, 2-113; Code 1993, § 1-11)

Sec. 1-12. Police power extended to city property.

The police power of the city is hereby extended to include all lands or property owned or leased by the city or any agency of the city and the general ordinances of the city shall be applicable on such property.

(Code 1978, § 1-8; Code 1993, § 1-12)

Sec. 1-13. Altering Code.

It shall be unlawful for any person to change or amend by additions or deletions, any part or portion of this Code, or to insert or delete pages, or portions thereof, or to alter or tamper with such Code in any manner whatsoever which will cause the law of the city to be misrepresented thereby; provided that supplementation of this Code by authorized persons shall be permitted.

(Code 1978, § 1-9; Code 1993, § 1-13)

Sec. 1-14. General penalty for violations of Code; continuing violations.

(a) Whenever in this Code or any other ordinance of the city, an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or wherever in such Code or ordinance the doing of an act is required or the failure to do any act is declared to be unlawful, and no specific penalty is provided therefor, the violation of any such provision of this Code or any such ordinance shall be punished by a fine not exceeding $500.00, except for:

(1) Violations of municipal ordinances that govern fire, safety, zoning, public health and sanitation, including dumping of refuse, vegetation and litter violations in which the maximum fine shall be $2,000.00 for each offense; and

(2) Violations of traffic laws which are punishable as a Class C misdemeanor shall be punished by a fine not to exceed $200.00.

However, no penalty shall be greater or less than the penalty provided for the same or similar offense under the laws of the state.

(b) Each day any violation of this Code or of any ordinance shall continue shall constitute a separate offense. Any violation of any provision of this Code which constitutes an immediate danger to the health, safety, and welfare of the public may be enjoined in a suit brought by the village for such purposes. If any violation of this Code is designated as a nuisance under the provisions of this Code, such nuisance may be summarily abated by the city in addition to the imposition of a fine or imprisonment.

(c) Unless otherwise specifically stated within the provisions of this Code, any violation of this Code or of any ordinance set forth herein that is punishable by a fine that does not exceed $500.00 does not require a culpable mental state, and a culpable mental state is hereby not required to prove any such offense.

(d) Unless otherwise specifically stated within the provisions of this Code, any violation of this Code or of any ordinance set forth herein that is punishable by a fine that exceeds $500.00 shall require a culpable mental state of intentionally, knowingly, recklessly or with criminal negligence engaging in conduct constituting the violation.

(e) In any prosecution in the municipal court of the city or of any other court of competent jurisdiction, a complaint charging a violation of this Code need not negate the existence of any affirmative defense but the existence of such may be raised by the defendant in any such prosecution by way of defense as provided in the Texas Penal Code.

(f) A complaint charging a violation of any provision of this Code in the municipal court of the city or any other court of competent jurisdiction need not negative the existence of any exception but the existence of the same may be raised by the defendant in such prosecution by way of defense.

(g) The imposition of a penalty under the provisions of this Code shall not prevent the revocation or suspension of any license, franchise or permit issued or granted under the provisions of this Code.

(h) The city council shall have the power to remit, in whole or in part and upon such conditions as may be deemed proper, by vote of two-thirds of the members present, any fine or penalty belonging to the city which may be imposed or incurred under any provision of this Code, ordinance or resolution adopted by the council or under the Penal Code of the state.

(Code 1978, §§ 1-10, 1-11, 2-25; Code 1993, §§ 1-14, 1-15, 2-28)

State law reference— Limitation on penalties, V.T.C.A., Local Government Code § 54.001; punishments, V.T.C.A., Penal Code ch. 12.

Sec. 1-15. Severability of parts of Code.

The sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared invalid, unenforceable or unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such invalidity, unenforceability or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Code.

(Code 1978, § 1-12; Code 1993, § 1-16)

Sec. 1-16. Effect of repeals.

The repeal of an ordinance shall not revive any ordinance in force before or at the time the ordinance repealed took effect. The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of such repeal, for an offense committed or cause of action arising under the ordinance repealed.

(Code 1978, § 1-13; Code 1993, § 1-17)

Sec. 1-17. Miscellaneous ordinances not affected by Code.

Nothing in this Code or the ordinance adopting this Code shall be deemed to affect the validity of any of the following:

(1) Any ordinance promising or guaranteeing the payment of money for the city, or authorizing the issuance of any bonds of the city or any evidence of the city's indebtedness;

(2) Any ordinance authorizing, confirming or otherwise relating to any contract;

(3) Any ordinance granting a franchise or other rights;

(4) Any appropriation ordinance or ordinance providing for the levy of taxes or for an annual budget, not inconsistent with this Code;

(5) Any ordinance relating to local improvements and assessments therefor;

(6) Any ordinance annexing territory to the city or discontinuing territory as a part of the city;

(7) Any ordinance dedicating or accepting any plat or subdivision in the city;

(8) Any ordinance or portion establishing any license or permit fee or establishing any other charge whatever, not inconsistent with this Code;

(9) Any ordinance regulating or fixing the rates for utility services supplied by the city;

(10) Any ordinance rezoning specific property;

(11) Any ordinance establishing personnel regulations, not inconsistent with this Code;

(12) Any ordinance adopting a comprehensive plan or public policy plan.

All such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out in full in this Code.

(Code 1993, § 1-18)

Chapter 2 ADMINISTRATION [1]

ARTICLE I. - IN GENERAL

ARTICLE II. - CITY COUNCIL

ARTICLE III. - OFFICERS AND EMPLOYEES

ARTICLE IV. - FINANCE

ARTICLE V. - RECORDS MANAGEMENT

ARTICLE VI. - BOARDS AND COMMISSIONS

FOOTNOTE(S):

--- (**1**) ---

State Law reference— Organization of municipal government, V.T.C.A., Local Government Code ch. 5 et seq.; form of government in home-rule municipality, V.T.C.A., Local Government Code ch. 26. (Back)

ARTICLE I. IN GENERAL

Secs. 2-1—2-18. Reserved.

Secs. 2-1—2-18. Reserved.

ARTICLE II. CITY COUNCIL [2]

DIVISION 1. - GENERALLY

DIVISION 2. - MAYOR

FOOTNOTE(S):

--- (**2**) ---

Charter reference— City council, § 6.01 et seq. (Back)

DIVISION 1. GENERALLY

Sec. 2-19. Compensation of elected officials.

Sec. 2-20. Conflict of interest.

Sec. 2-21. Removal.

Sec. 2-22. Rules of procedure.

Sec. 2-23. Investigative body.

Sec. 2-24. Powers.

Sec. 2-25. Penalty for failure to obey subpoenas.

Secs. 2-26—2-53. Reserved.

Sec. 2-19. Compensation of elected officials.

In accordance with the city Home Rule Charter, section 6.04, compensation, effective October 1 of each year, beginning November 6, 2007, the stipend/compensation for the mayor and members of city council shall be, as follows:

(1) The monthly stipend for the mayor shall be $750.00 per month.

(2) The mayor and each member of the city council shall receive compensation, per person, of $100.00 per regular, special or workshop meetings attended each month. Should any such meetings be scheduled back-to-back, they shall be construed to be one meeting.

(3) The mayor and members of the city council shall also be reimbursed for actual expenses incurred while on official city business.

(4) Compensation shall be reviewed annually for budget adjustments and figures shall be indexed to the Bureau of Labor Statistics, Consumer Price Index for Houston, or a similar index during the budget process.

(Code 1978, § 2-26; Code 1993, § 2-29; Ord. No. 92-14, 9-9-1992; Ord. No. 2007-16, 11-5-2007)

Sec. 2-20. Conflict of interest.

No member of the city council shall be the surety of any person having any contract, work or business with the city, for the performance of which security may be required, nor be security on the official bond of any officer of the city.

(Code 1978, § 2-29; Code 1993, § 2-30)

State law reference— Regulation of conflicts of interest of officers of municipalities, V.T.C.A., Local Government Code ch. 171.

Sec. 2-21. Removal.

Any member of the city council may be expelled or removed from office in the manner prescribed by law by the concurrent vote of two-thirds of all the members elected.

(Code 1978, § 2-30; Code 1993, § 2-31)

Sec. 2-22. Rules of procedure.

(a) *Adopted.* The following rules of procedure (the "rules") are adopted by the city council (the "council") in accordance with section 6.13 of the city Charter. These rules shall govern all meetings and proceedings of the city council, the order of business, and the conduct of city councilmembers and persons in attendance at such meetings. Additionally, these principles, parliamentary procedures and rules for citizen participation shall be adhered to by all city commissions, boards and committees, to the extent such rules of procedure are not inconsistent with the public business to be conducted by such a body.

(b) *Purpose and guiding principles.* These rules are simple and meant to be kept simple. Strict technical rules tend to impede rather than advance the legislative process. Reason, common sense and cooperation must prevail in the conduct of city business. Dissent and debate are essential and beneficial elements of our system of free and open government, but rules should not be used to hinder the process, however the ultimate outcome is viewed by an individual or group.

(c) *Meetings.* The following types of meetings may be held:

(1) *Regular meetings.* In accordance with section 6.12 of the city Charter, the council shall conduct regular meetings on the first and third Mondays of each month. Whenever a regular meeting date falls on a holiday observed by the city, such regular meeting shall be scheduled and held on the next calendar day which is not a holiday observed by the city, unless the council takes action in advance, by resolution or ordinance, to reschedule such meeting.

a. All regular meetings shall begin promptly at 6:00 p.m. (See special/workshop meetings in subsection (2) and (3) of this section.

b. Regular meetings shall be held at the city hall as required by the Charter, unless the city council votes to approve a location other than the city hall in the public interest.

(2) *Special meetings.* In accordance with section 6.12 of the Charter, additional special meetings may be called upon written request of the mayor or any three councilmembers. If a majority of the city councilmembers at a public meeting request a subsequent special meeting, a special meeting shall be scheduled at the earliest practical time as requested. The council meeting minutes reflecting the request to call a special meeting shall also reflect the scheduled date and time of such special meeting.

a. Special meetings may be called to address and act on matters which should not be delayed until a regular meeting.

b. Special meetings shall be called to begin promptly at the time designated, unless circumstances reasonably require a different starting time, in which event the circumstances shall be stated on the meeting agenda.

c. Except in unusual circumstances, which shall be stated on the meeting agenda, special meetings will be held at the city hall.

(3) *Workshop meetings.* In accordance with section 6.12 of the Charter, additional workshop meetings may be called upon written request of the mayor or any three councilmembers. If a majority of the city councilmembers at a public meeting request a subsequent workshop meeting, a workshop meeting shall be scheduled at the earliest practical time as requested. The council meeting minutes reflecting the request to call a workshop meeting shall also reflect the scheduled date and time of such workshop meeting.

a. The purpose of a workshop meeting is to give council the opportunity to discuss in depth or explore in detail subjects of interest to the city.

b. No action items shall be placed on the agenda for a workshop meeting.

c. Workshop meetings shall begin promptly at the time designated and may precede a regular or special meeting. If circumstances reasonably require a different starting time or a different date, such circumstances shall be stated on the meeting agenda.

d. As circumstances require, public hearings may be held at workshop meetings for the convenience of the public.

e. Except in unusual circumstances, which shall be stated on the meeting agenda, workshop meetings will be held at the city hall.

(4) *Public meetings; executive sessions.* All meetings of the city council are open to the public, in compliance with the Texas Open Meetings Act. Further, the city council may conduct executive sessions in compliance with the Texas Open Meetings Act.

(d) *Agenda.* The following provisions shall apply:

(1) *Items on the agenda.* An item may be placed on the agenda by the mayor or city manager. The city manager, working in conjunction with the mayor, will exercise their best judgment in determining what other items of city business should come before the council. City staff seeking to have an item placed on an agenda shall submit that item to the city manager's office for approval. If two or more of the city councilmembers make a request in writing that an agenda item be placed on the agenda for any subsequent meeting, then such item shall be placed on

the agenda for discussion and/or action as requested. A city councilmember, in accordance with V.T.C.A., Government Code § 551.042, may propose an item for inclusion on the agenda for a subsequent meeting, and any deliberation or decision on such item shall be limited to the proposal to place the item on the agenda.

(2) *Submission of items and backup materials.* Items to be placed on the agenda, including the materials to be distributed to council in connection with the items, must reach the city secretary's office at the city hall before 12:00 noon on the Wednesday of the week preceding the council meeting.

(3) *Packets.* The agenda packets for all regular meetings will be available in city hall after 4:00 p.m. on Thursday preceding the Monday meetings. This should afford ample time for all councilmembers to inquire into the nature of each matter to be discussed.

(4) *Notice to media.* The city secretary's office will assume responsibility for issuing to newspapers, radio and television stations, which have requested such notification, a copy of the agenda advising them that the regular meeting will be held on the following night. The city secretary's office will also assume the responsibility for compliance with the open meetings law.

(5) *Consideration limited to agenda items.* Except for discussions pertaining to announcements or to requests to have items placed on a subsequent agenda, the council will restrict consideration only to the item or items on the current agenda.

(6) *Organization and order of agenda.* The following order shall be followed:

a. Call to order/roll call.

b. Pledges of allegiance and invocation.

c. Public comments and receipt of petitions. Citizens desiring to be heard will be given the opportunity. Petitions will be received. (See rules for "citizen participation at meetings" in subsection (i) of this section.)

d. Presentations.

e. Reports and announcements.

f. Approval of minutes.

g. Old business, by item, discussion/action. Final passage of ordinances and other business pending from a previous council meeting.

h. New business consent agenda; items requiring little or no discussion. If one or more members of council desire to remove an item from the consent agenda, such items shall be considered and acted upon separately (placed before new business).

i. New business, by item, discussion/action. New ordinances, resolutions, budget amendments and changes, bid openings and bid awards, contracts, policies and other matters to be considered and/or acted upon. New business shall include all public bid openings.

j. Executive session.

k. Adjournment.

(e) *Council proceedings.* In accordance with section 6.13 of the Charter, four councilmembers, one of whom may be the mayor, shall constitute a quorum for the purpose of transaction of business and no action of the council shall be valid or binding unless adopted by the affirmative vote of three or more members of the council.

(f) *Parliamentary procedure.* In all council meetings, the following commonly used rules of parliamentary procedure will be followed. In the event that conflict results in gridlock, and reasonable compromise fails to move the council forward in the conduct of city business, then Robert's Rules of Order, Newly Revised will be followed as necessary. The rules are as follows:

(1) *Questions to contain one subject.* All questions (motions) submitted for a vote shall contain only one subject. If a question contains two or more points under one subject, any member may require a division, if the question reasonably admits of a division.

(2) *Main motion.* A subject is introduced by a main motion. Once seconded, no other topics should be taken up until after the motion is disposed of.

(3) *Second.* Any motion requires a second or it dies for lack of a second.

(4) *Motion to amend.* This motion is used when the intention is to change, add or omit some part of a main motion. This motion is debatable and requires a majority vote of the members present for passage. A motion to amend is not amendable. First, a vote is held on the motion to amend. If that vote is affirmative, the second vote is held on the main motion as amended.

(5) *Motion to table or postpone to a certain time.* This motion would require that consideration of a main motion be delayed until a certain, stated time for, among other reasons, to obtain more information. A future date certain should be set when the subject would be considered. This motion is debatable and requires a majority vote of the members present for passage.

(6) *Motion to table indefinitely.* This motion postpones consideration of the main motion in such a way that the issue being discussed may be taken up at an unspecified, later date when a majority of the members present vote to "call it from the table." This motion is not debatable and requires a majority vote of the members present for passage.

(7) *Motion to move the question or call the question.* This motion is made to end discussion that has become lengthy or repetitious. When seconded, the presiding officer immediately moves or calls the vote on the question of closing the discussion. This motion is not debatable and requires a majority vote of the members present for passage.

(8) *Motion to reconsider.* A vote may be reconsidered during the same meeting on motion made by a member who voted on the prevailing (winning) side of the issue. This motion is debatable and requires a majority vote of the members present for passage. First a vote is held on the motion to reconsider. If that vote is affirmative, the second vote is held on the issue to be reconsidered.

(9) *Reconsideration of a subject when defeated.* When an ordinance, resolution, motion or other measure has been placed on the agenda, voted on and defeated, the same question shall not again be placed on the agenda for a subsequent meeting to be considered by the council until a lapse of 90 days, unless a majority of council present vote, at a public meeting, that the question be placed on the agenda of a subsequent meeting, stating the date.

(10) *Suspension of rules; order of agenda.* Consistent with state law and the Charter, any one or all of these rules of procedure may be suspended in order to allow a particular consideration of a subject or matter, provided a majority of the members present vote in favor of such suspension; provided further, the order of business on the agenda may also be suspended by such a majority vote. This motion is debatable.

(11) *Vote.* The presiding officer shall call for a vote by requesting "all in favor say aye" and "all opposed say nay." The presiding officer or any other member may request a roll call vote at any time, including immediately after a voice vote. Except for the "majority vote of the members present" provided for in applying these procedural rules, any action by council shall require the affirmative vote of three or more members of the council (the mayor has a binding vote only in the case of a tie), in accordance with section 6.13 of the Charter. A councilmember shall state the reason for an abstaining vote, in accordance with section 6.13 of the Charter.

(12) *Frivolous or delaying motions.* The presiding officer shall not entertain any motion which is frivolous or clearly made for the purpose of delay. In the event a conflict develops, any member may call for a vote (majority of the members present) to consider the matter or to move along.

(13) *Point of order.* A point of order can be raised at any time and supersedes any issue being discussed at the time. A member who believes the rules are not being followed may use this mechanism to call attention to the problem. The presiding officer must rule on the point of order before proceeding.

(14) *Questions and inquiries.* A member may ask about correct procedures, ask for facts, ask to speed things along, for a recess for comfort and convenience, or other relevant questions and inquiries. The presiding officer responds to the question or refers it to the proper person.

(15) *Limit debate.* The council may agree to limit debate on any subject before it is discussed or debated. The agreement should be formalized by majority vote of the members present.

(16) *Recessed meetings.* Recessing a meeting is not a favored practice. However, if circumstances require, any meeting of the council may be recessed to a later time, provided that no recess shall be for a longer period than until the next scheduled meeting. Prior to the recess the presiding officer shall announce the time, date and subjects of the meeting to be reconvened. A new agenda shall be posted for the reconvened meeting, making clear reference to the recessed meeting. The presiding officer may declare the meeting recessed without waiting for a motion. A member may move to recess under the same conditions. When the meeting is recessed, the meeting is immediately halted. The motion by a member is not debatable and a majority vote of the members present is required for passage.

(17) *Motion to adjourn.* If the time set for adjournment has arrived or if there is no further business, the presiding officer may declare the meeting recessed without waiting for a motion. A member may move to recess under the same conditions. When the meeting is recessed, the meeting is immediately halted. The motion by a member is not debatable and a majority vote of the members present is required for passage.

(18) *Procedural summary.* The following summary of these procedural rules is included for ease of reference. In the event of an interpretation conflict between this summary and the narrative provisions of these procedural rules, the narrative procedural rules shall control.

Motion	Debatable	Amendable	Majority Vote of Members Present
Main motion	Yes	Yes	Yes
Motion to amend	Yes	No	Yes
Table or postpone to a certain time	Yes	Yes	Yes
Table indefinitely	No	No	Yes
Move or call the question	No	No	Yes
Reconsider	Yes	Yes	Yes

Suspend rules	Yes	Yes	Yes
Point of order	No	No	(Presiding officer)
Limit de-bate	Yes	Yes	Yes
Recess	No	No	Yes
Adjourn	No	No	Yes

(g) *City councilmembers decorum and debate.* When a measure is presented for consideration to the council, the presiding officer shall recognize the appropriate individual to present the matter. When two or more members wish to speak, the presiding officer shall name the member who is to speak first. No member of the council shall interrupt another while speaking, except to make a point of order. The presiding officer shall not be obligated to recognize any councilmember for a second comment on the subject or amendment until every councilmember wishing to speak has been allowed a first comment. Councilmembers shall also have the right to yield the floor to another member.

(1) Councilmembers should not indulge in personal attacks, use personally offensive language, arraign motives of councilmembers or staff, charge deliberate misrepresentation, or use language tending to hold a member of the city council or staff up to contempt.

(2) If a member is transgressing the rules of the council, the presiding officer shall, or any councilmember may, call him to order, in which case he shall immediately be quiet unless permitted to explain. The council shall, if appealed to, decide the matter by majority vote of the members present without debate. If the decision is in favor of the member called to order, he shall then be at liberty to proceed, but not otherwise, in compliance with these rules.

(h) *Duties of mayor or presiding officer.* At all meetings, it is the responsibility of the presiding officer to use the rules of procedure appropriately so that good order and reasonable decorum are maintained and the business of the meeting goes forward. The presiding officer's duties include:

(1) Calling the meeting to order at the time set.

(2) Following the agenda and clarifying to the members what is being voted on at all times.

(3) Ensuring that the rules and procedures for the conduct of meetings are followed.

(4) Dealing firmly with whispers, commotion, disruptions and frivolous motions.

(5) Ensuring that debate is confined to the merits of the question and that personal comments are avoided.

(6) Ensuring that the rules for citizen participation are followed.

(7) Remaining calm and dealing fairly with all sides of an issue, regardless of personal opinion.

(8) Ensuring that city business is handled expeditiously during council meetings.

(i) *Citizens' participation at meetings.* Rules for speakers:

(1) *Recognition.* Citizens will be allowed to speak at a meeting; however, before a member of the public may address city council or speak at a meeting, the presiding officer must first recognize the member of the public who wishes to speak and announce that the person may proceed.

(2) *Time limit.* The presiding officer, or the city council by majority vote of the councilmembers present, may set a reasonable time limit for any citizen or person in attendance who desires to address the council or speak at a meeting.

(3) *Identification.* All members of the public speaking before council shall preface their statements with their name and home address for the record.

(4) *Speaking from the podium.* All speakers must come to the podium, unless the presiding officer permits speakers to make their statements from their seat in the meeting room.

(5) *Spokesperson.* Speakers with similar or common interests are encouraged to select someone to act as a spokesperson in order to move the proceedings along. The presiding officer may urge the implementation of this rule at any time.

(6) *Public comments and receipt of petitions; public hearings.* Any person desiring to be heard by the city council on any matter shall be heard during that part of the meeting reserved for public comments and receipt of petitions, or as scheduled for a public hearing.

(7) *Scheduled speakers.* Speakers may request, in writing, an opportunity to be placed on the agenda to speak at a meeting concerning a specific matter, as identified in their written request. Written requests to be placed on the agenda to speak must be delivered to the city secretary, or the city secretary's designee, by 12:00 noon on Wednesday of the week preceding the regular, special or workshop meeting of the city council. In the event that the number of speakers who request to be scheduled on the agenda indicates that the comments will be lengthy or repetitious, the presiding officer may schedule such matter for a public hearing or make other appropriate arrangements to ensure that the conduct of the city's business is not unduly impeded.

(8) *Speaking during consideration of agenda items.* The presiding officer at his own discretion, or by majority vote of the councilmembers present, may recognize a person or persons in attendance and allow such persons to speak prior to consideration and discussion of an agenda item by the city council. Any further discussion of the same matter shall likewise be at the discretion of the presiding officer, or by majority vote of councilmembers present.

(9) *Rules not to restrict the city.* These rules for speakers will not be construed or applied in such a manner that they restrict the ability of the mayor, or the city council by majority vote of the members present, to reasonably limit or expand the debate and discussion of any item, when necessary in the city's best interest.

(Code 1978, § 2-31; Code 1993, § 2-32; Ord. No. 91-13, 11-18-1991; Ord. No. 92-11, § 1.0, 7-20-1992; Ord. No. 95-03, §§ 1—9, 3-20-1995; Ord. No. 2011-07, §§ 1(2.32(c)), 2(2.32(d)), 5-2-2011)

State law reference— Open meetings of governmental bodies, V.T.C.A., Government Code § 551.001 et seq.

Sec. 2-23. Investigative body.

The city council shall have the power to call special meetings of the city council and to conduct itself as an investigative body for the purpose of inquiring into the official conduct of any department, agency, office, officer, or employee of the city. The investigative body shall be chaired by the mayor and, in the absence of the mayor, by the mayor pro tem. The investigative body shall conduct itself in accordance with Robert's Rules of Order, Newly Revised as provided for all city council meetings.

(Code 1993, § 2-33; Ord. No. 89-01, § 2-32, 2-6-1989)

Charter reference— Investigative body, § 6.16.

Sec. 2-24. Powers.

(a) The city council, when sitting as an investigative body, shall have the power to administer oaths, subpoena witnesses, compel the production of books, papers, and other evidence, material to the inquiry being conducted by the city. The city council shall have the power to issue subpoenas for witnesses and for evidence.

(b) Subpoenas shall be served and returned in accordance with the Texas Criminal Procedure Code and Rules. A subpoena shall be served by reading the same in the hearing of the witness or by delivering a copy of the subpoena to the witness. The officer having the subpoena shall make due return thereof, showing the time and manner of service, if served, and, if not served, he shall show in his return the cause of his failure to serve it; and if the witness could not be found, he shall state the diligence he has used to find him and what information he has as to the whereabouts of the witness.

(c) If a witness has in his possession any instrument of writing or other item desired as evidence or subpoenaed by the city council, the subpoena shall specify such evidence and direct that the witness bring the same with him and produce it before the city council. All such subpoenas shall be issued by the city secretary, the city secretary shall sign the subpoena and indicate on it the date it was issued and the city secretary shall sign as attesting that the subpoena was issued at the insistence and request of the city council.

(Code 1993, § 2-34; Ord. No. 89-01, § 2-33, 2-6-1989)

Sec. 2-25. Penalty for failure to obey subpoenas.

(a) If a witness refuses to obey a subpoena, he shall be found to be in contempt. Upon a finding of contempt, he may be fined at the discretion of the city council in an amount not exceeding $200.00 for each day in which the subpoena is not answered.

(b) The witness shall be found guilty of contempt for refusing to obey the subpoena if the witness is not in attendance before the city council on the day set apart for taking up the matter specified in the subpoena or if he is not in attendance at any other time named in the subpoena or if he refuses, without legal cause, to produce evidence in his possession which he has been summoned to bring with him and produce.

(Code 1993, § 2-35; Ord. No. 89-01, § 2-34, 2-6-1989)

Secs. 2-26—2-53. Reserved.

DIVISION 2. MAYOR [3]

Sec. 2-54. Presiding officer in absence of mayor, mayor pro tem.

Sec. 2-55. Recommendations to council.

Sec. 2-56. Administer oaths.

Sec. 2-57. Sign various instruments.

Secs. 2-58—2-87. Reserved.

Sec. 2-54. Presiding officer in absence of mayor, mayor pro tem.

In the absence of both the mayor and the mayor pro tem, any one of the councilmembers may be appointed to preside.

(Code 1978, § 2-41; Code 1993, § 2-46)

Sec. 2-55. Recommendations to council.

The mayor shall, from time to time, communicate such information and recommend such measures to the city council for its consideration as he may deem best for the interest, welfare and good government of the city.

(Code 1978, § 2-42; Code 1993, § 2-47)

Sec. 2-56. Administer oaths.

The mayor shall have like power with the justice of the peace to administer oaths of office, and all other oaths and affirmations, and to give certificates thereof.

(Code 1978, § 2-44; Code 1993, § 2-48)

Sec. 2-57. Sign various instruments.

The mayor shall officially sign all warrants upon the city treasury, and all notes, bonds, contracts and obligations in writing entered into by the city. It shall be his duty to see that all contracts with the city are faithfully performed by the contractors.

(Code 1978, § 2-45; Code 1993, § 2-49)

Secs. 2-58—2-87. Reserved.

FOOTNOTE(S):

--- (**3**) ---

Charter reference— Mayor's election, duties, term, §§ 6.02, 6.08; mayor to have vote only in case of ties, § 6.13. (Back)

ARTICLE III. OFFICERS AND EMPLOYEES [4]

DIVISION 1. - GENERALLY

DIVISION 2. - REMOVAL FROM OFFICE

DIVISION 3. - MUNICIPAL RETIREMENT

DIVISION 4. - DEFENSE AND INDEMNIFICATION OF CITY OFFICERS, EMPLOYEES AND VOLUNTEERS

DIVISION 5. - CODE OF ETHICS

FOOTNOTE(S):

--- (**4**) ---

Charter reference— Administrative services, art. VII. (Back)

State Law reference— Matters affecting public officers and employees, V.T.C.A., Local Government Code ch. 141 et seq. (Back)

DIVISION 1. GENERALLY

Sec. 2-88. Oath of office.

Sec. 2-89. Turn over effects of office.

Sec. 2-90. Accounting of city funds.

Sec. 2-91. Resignations.

Secs. 2-92—2-110. Reserved.

Sec. 2-88. Oath of office.

All city officers or employees, when required by city council, shall, before entering upon and discharging the duties of their offices, take and subscribe to the oath of office prescribed by the state constitution before some officer authorized to administer the same.

(Code 1978, § 2-60; Code 1993, § 2-71)

Charter reference— Official oath, § 3.01.

State constitution reference— Oath of elected officers, art. XVI, § 1.

Sec. 2-89. Turn over effects of office.

Whenever the duties of any officer of the city shall cease, he shall turn over to his successor, or in case there is no successor to the mayor or city secretary, all books, papers, records, documents and appurtenances of the city belonging to his office.

(Code 1978, § 2-62; Code 1993, § 2-72)

Sec. 2-90. Accounting of city funds.

Any officer who, by virtue of his office, receives or disburses any money belonging to the city shall make a full, accurate and final settlement with the city council at the expiration of the term of his office.

(Code 1978, § 2-63; Code 1993, § 2-73)

Sec. 2-91. Resignations.

Resignations of officers of this city not covered under the personnel guidelines shall be made to the city council in writing, subject to the approval and acceptance thereof; provided, any person appointed by the mayor who wishes to resign shall present his resignation in writing to the mayor for his action.

(Code 1978, § 2-65; Code 1993, § 2-75)

Secs. 2-92—2-110. Reserved.

DIVISION 2. REMOVAL FROM OFFICE

Sec. 2-111. Scope.

Sec. 2-112. Grounds.

Sec. 2-113. Notice of charges.

Sec. 2-114. Procedure against mayor.

Sec. 2-115. Procedure against other officers.

Sec. 2-116. Rights of accused.

Sec. 2-117. Final action.

Sec. 2-118. Alternative procedure.

Sec. 2-119. Eligibility for re-election.

Secs. 2-120—2-136. Reserved.

Sec. 2-111. Scope.

This division applies only to the mayor, councilmembers, city attorney and municipal judge.

(Code 1993, § 2-106)

Sec. 2-112. Grounds.

Any officer of this city not covered under the personnel regulations may be tried by the city council and removed from office for malfeasance, nonfeasance or misfeasance in office, for a willful violation of the ordinances of the city, for habitual drunkenness, incompetency, corruption, willful or habitual neglect of duty or upon conviction of a felony.

(Code 1978, § 2-74; Code 1993, § 2-107)

Sec. 2-113. Notice of charges.

Before any officer shall be removed from office, written charges shall be preferred against him and filed with the mayor, and notice thereof served on the accused at least ten days before the hearing of the charges, except in cases of absence from the city, in which case notice may be made by publication in the official newspaper of the city for ten days.

(Code 1978, § 2-75; Code 1993, § 2-108)

Sec. 2-114. Procedure against mayor.

When charges are preferred against the mayor of this city, they shall be filed with either of the councilmembers whose duty it will be to assemble the board together, and when so assembled they shall elect one of their members to preside during the investigation and for the purposes of trial. The presiding officer so elected shall perform the duties of mayor, and the trial shall proceed as provided in this division.

(Code 1978, § 2-76; Code 1993, § 2-109)

Sec. 2-115. Procedure against other officers.

Whenever charges are preferred and filed with the mayor by any person against one of the councilmembers, or some other officer, it shall be the duty of the mayor to have the accused duly served with a copy of such charge, and he shall notify the accused, the councilmembers and the witnesses for and against the accused to be present. The mayor and councilmembers shall constitute a court to try and determine the case, and may continue the investigation from day to day, upon proper showing, to enable the accused or prosecutor to get material evidence before the court.

(Code 1978, § 2-77; Code 1993, § 2-110)

Sec. 2-116. Rights of accused.

Any officer accused pursuant to section 2-112 shall have the right to be heard in person and by counsel, to produce testimony in his behalf; the city shall likewise be represented by counsel if the court desires it. All proceedings, so far as practicable, in such court shall be in accordance with the practice in civil proceedings in the courts of this state.

(Code 1978, § 2-78; Code 1993, § 2-111)

Sec. 2-117. Final action.

Upon the conclusion of the investigation and argument of the case, a vote shall be taken upon each charge and specification by yeas and nays, and upon the final issue the question shall be: "Shall the accused be removed from office?" If two-thirds of the members of the court present vote to sustain either of the charges against the accused, it shall be the duty of the presiding officer to enter the judgment of the court, in which he shall record the vote of each member upon the several charges and specifications, and shall also include in such judgment an order removing the accused from his office and declaring the same vacant, but if the vote is otherwise and the accused declared not guilty, the judgment shall be entered accordingly; provided, it shall require all of the council to constitute a quorum for the trial of such cases and a concurrent vote of two-thirds of all the councilmembers elected to remove.

(Code 1978, § 2-79; Code 1993, § 2-112)

Sec. 2-118. Alternative procedure.

In addition to the foregoing power of removal, the council shall have the power at any time to remove any officer of the city, appointed or elected by it, by resolution declaratory of its want of confidence in such officer; provided, two-thirds of all councilmembers elected vote in favor of such resolution.

(Code 1978, § 2-80; Code 1993, § 2-113)

Sec. 2-119. Eligibility for re-election.

The officers removed from office under this division shall not be eligible to reelection for two years from the date of such removal.

(Code 1978, § 2-81; Code 1993, § 2-114)

Secs. 2-120—2-136. Reserved.

DIVISION 3. MUNICIPAL RETIREMENT [5]

Sec. 2-137. Election to participate.

Sec. 2-138. Notice of election.

Sec. 2-139. Inclusion of employees.

Sec. 2-140. Additions to, discontinuance of coverage.

Sec. 2-141. Deposits for current service.

Sec. 2-142. Single composite participation date.

Sec. 2-143. Remittance; reports to board of trustees.

Sec. 2-144. Supplemental benefits fund—Election to participate.

Sec. 2-145. Same—Notice.

Sec. 2-146. Same—Employees included.

Sec. 2-147. Same—Remittance; reports.

Sec. 2-148. Updated service credits.

Sec. 2-149. Retirement credit for military service.

Sec. 2-150. Restricted prior service credit.

Sec. 2-151. Eligibility to retire.

Sec. 2-152. Five-year vesting.

Secs. 2-153—2-168. Reserved.

Sec. 2-137. Election to participate.

On behalf of the city, the city council hereby exercises its option and elects to have the city and all of the employees of all departments participate in the state's municipal retirement system as provided in V.T.C.A., Government Code § 851.001 et seq.; and all of the benefits and obligations of such system are hereby accepted as to such employees.

(Code 1978, § 2-132; Code 1993, § 2-126)

Sec. 2-138. Notice of election.

The mayor is hereby directed to notify the board of trustees of the state's municipal retirement system that the city has elected to participate in and have the employees of the city participate in such system.

(Code 1978, § 2-133; Code 1993, § 2-127)

Sec. 2-139. Inclusion of employees.

Each person who meets the qualifications of and becomes an employee of any participating department of this city on or after the effective date of participation of such department shall be included within and subject to the provisions of the state's municipal retirement system from the date such person becomes an "employee" as defined in subsection 14, section II of such system.

(Code 1978, § 2-134; Code 1993, § 2-128)

Sec. 2-140. Additions to, discontinuance of coverage.

The city may in the future refuse to add new departments or new employees to the retirement system, but shall never discontinue as to any participants.

(Code 1978, § 2-135; Code 1993, § 2-129)

Sec. 2-141. Deposits for current service.

That all employees of the city, who are members of the state municipal retirement system, shall make deposits to the system at the rate of seven percent of their individual earnings.

(Code 1978, § 2-136; Code 1993, § 2-130; Ord. No. 94-16, 10-3-1994)

Sec. 2-142. Single composite participation date.

The city hereby elects to have all of its departments now participating in the state's municipal retirement system hereafter treated and considered, for the purpose of determining normal and prior service contribution rates to the state's municipal retirement system and for the purpose of determining any period within which the city shall fund the obligations mentioned in V.T.C.A., Government Code § 855.401 et seq., as amended, as having a single composite participation date, which composite date shall be determined by the actuary of the state's municipal retirement system in the manner prescribed by such statute.

(Code 1978, § 2-137; Code 1993, § 2-131)

Sec. 2-143. Remittance; reports to board of trustees.

The city human resources director is hereby directed to remit to the board of trustees of the state's municipal retirement system, at its office in Austin, Texas, the city's proper contributions to the system and the amounts which shall be deducted from the compensation or payroll of employees, all as required by the board under the provisions of state law, as amended. The human resources director is hereby authorized and directed to ascertain and officially certify on behalf of the city the prior service rendered to the city by each of the employees of the participating departments, and the average prior service compensation received by each, and to make and execute all other reports and certificates which may be required by the city under the provisions of state law or the rules and regulations of the board of trustees of the state's municipal retirement system.

(Code 1978, § 2-138; Code 1993, § 2-132)

Sec. 2-144. Supplemental benefits fund—Election to participate.

The city, by its city council, hereby elects to have the employees of all participating departments who meet the qualifications participate in and be covered by the supplemental benefits fund of the state municipal retirement system, as provided by law; and all the benefits and obligations of participation in such fund are hereby accepted by the city as to such employees.

(Code 1978, § 2-139; Code 1993, § 2-133)

Sec. 2-145. Same—Notice.

The human resources director is hereby directed to notify the board of trustees of the municipal retirement system that the city has elected to participate and have the employees of the departments participate in the supplemental benefits fund of the system.

(Code 1978, § 2-140; Code 1993, § 2-134)

Sec. 2-146. Same—Employees included.

Each person who meets the qualifications of and becomes an employee of any participating department on or after the effective date of participation of such department in the supplemental benefits fund shall as a condition of his employment be covered into the supplemental benefits fund of the system. The city may in the future refuse to add new departments or new employees to such fund, but shall never discontinue as to any members who are covered into the fund.

(Code 1978, § 2-141; Code 1993, § 2-135)

Sec. 2-147. Same—Remittance; reports.

The city human resources director is hereby directed to remit monthly to the board of trustees of the municipal retirement system at its office in Austin, Texas, as the city's contributions to the supplemental benefits fund of the municipal retirement system, such percentage of earnings of the employees of the city described in section 2-146 as may be fixed by the board of trustees of the municipal retirement system, provided that the rate of contribution to such fund shall not exceed one-half of one percent of the earnings of the employees of the city who are covered under such fund; and such official shall make for the city such reports as the board of trustees of the municipal retirement system may prescribe.

(Code 1978, § 2-142; Code 1993, § 2-136)

Sec. 2-148. Updated service credits.

(a) *Authorization.*

(1) On the terms and conditions set out in V.T.C.A., Government Code §§ 853.401—853.404 of subtitle G of title 8, as amended (hereinafter referred to as the "TMRS Act"), each member of the state municipal retirement system (hereinafter referred to as "the system") who has current service credit or prior service credit in the system in force and effect on January 1 of the calendar year preceding such allowance, by reason of service in the employment of the city, and on such date had at least 36 months of credited service with the system, shall be and is hereby allowed "updated service credit" (as that term is defined in subsection (d) of section 853.402 of the TMRS Act).

(2) On the terms and conditions set out in section 853.601 of the TMRS Act, any member of the system who is eligible for updated service credits on the basis of service with this city, who has unforfeited credit for prior service and/or current service with another participating municipality or municipalities by reason of previous service, and was a contributing member of the January 1

of the calendar year preceding such allowance, shall be credited with updated service credits pursuant to, calculated in accordance with, and subject to adjustment as set forth in such section 853.601, both as to the initial grant hereunder and all future grants under this section.

(3) The updated service credit hereby allowed and provided for shall be 100 percent of the "based updated service credit" of the member (calculated as provided in subsection (c) of section 853.402 of the TMRS Act).

(4) Each updated service credit allowed hereunder shall replace any updated service credit, prior service credit, special prior service credit, or antecedent service credit previously authorized for part of the same service.

(5) In accordance with the provisions of subsection (d) of section 853.401 of the TMRS Act, the deposits required to be made to the system by employees of the several participating departments on account of current service shall be calculated from and after the effective date of this section on the full amount of such person's compensation as employee of the city.

(b) *Increase in retirement annuities.*

(1) On terms and conditions set out in section 854.203 of the TMRS Act, the city hereby elects to allow and to provide for payment of the increases below stated in monthly benefits payable by the system to retired employees and to beneficiaries of deceased employees of the city under current service annuities and prior service annuities arising from service by such employees to the city. An annuity increased under this subsection replaces any annuity or increased annuity previously granted to the same person.

(2) The amount of the annuity increase under this subsection is computed as the sum of the prior service and current service annuities on the effective date of retirement of the person on whose service the annuities are based, multiplied by 70 percent of the percentage change in consumer price index for all urban consumers, from December of the year immediately preceding the effective date of the person's retirement to the December that is 13 months before the effective date of the ordinance from which this subsection is derived.

(3) An increase in an annuity that was reduced because of an option selection is reducible in the same proportion and in the same manner that the original annuity was reduced.

(4) If a computation hereunder does not result in an increase in the amount of an annuity, the amount of the annuity will be changed hereunder.

(5) The amount by which an increase under this subsection exceeds all previously granted increases to an annuitant is an obligation of the city and of its account in the municipality accumulation fund of the system.

(6) Pursuant to section 855.407(g) of the TMRS Act, the city hereby elects to make future normal and prior service contributions to its account in the municipal accumulation fund of the system at such combined rate of the total compensation paid by the city to employees who are members of the system, as the system's actuary shall annually determine as the rate necessary to fund, within the amortization period determined as applicable to the city under the TMRS Act, the costs of all benefits which are or may become chargeable to or are to be paid out of the city's account in said accumulation fund, regardless of other provisions of the TMRS Act limiting the combined rate of city contributions.

(c) *Date of allowances and increases.* The initial allowance of updated service credit and increase in retirement annuities hereunder shall be effective on January 1, 1995, subject to approval by the board of trustees of the system. An allowance of updated service credits and an increase in retirement annuities shall be made hereunder on January 1 of each subsequent year until this section ceases to be in effect under subsection (e) of section 853.404 of the TMRS Act, provided that, as to such subsequent year, the actuary for the system has made the determination set forth in subsection (d) of section 853.404 of the TMRS Act.

(d) *Increase in municipal contributions.* That effective January 1, 1995, for each month of current service thereafter rendered by each of its employees who are members of the state municipal retirement

system, the city will contribute to the current service annuity reserve of each such member at the time of his retirement, a sum that is 200 percent of such member's accumulated deposits for such month of employment; and such sum shall be contributed from the city's account in the municipality accumulation fund.

(e) *Effective date.* Subject to approval by the board of trustees of the system, this section shall be and become effective on January 1, 1995.

(Code 1978, § 2-143; Code 1993, § 2-137; Ord. No. 89-11, §§ 1—3, 8-21-1989; Ord. No. 90-06, §§ 1—3, 11-19-1990; Ord. No. 91-10, §§ 1—4, 10-21-1991; Ord. No. 93-03, §§ 1—4, 5-3-1993; Ord. No. 94-16, §§ 1—3, 10-3-1994; Ord. No. 2010-19, § 1, 9-7-2010)

Sec. 2-149. Retirement credit for military service.

(a) Pursuant to V.T.C.A., Government Code § 853.504, as amended, the city hereby elects to allow eligible members in its employment to establish credit in the state municipal retirement system for active military service performed as a member of the Armed Forces or Armed Forces Reserves of the United States or an auxiliary of the Armed Forces or Armed Forces Reserves. Eligible members, as used in this section, shall be those employees meeting the criteria set forth in V.T.C.A., Government Code §§ 853.504(b) and 853.505, and the amount and use of creditable military service shall be as further set forth in V.T.C.A., Government Code § 853.505.

(b) In order to establish credit for military service under this section, a member must have been a contributing member of the certifying city on December 31, 2003, and must deposit with the state municipal retirement system (in that member's individual account in the employees saving fund), an amount equal to the number of months for which credit is sought, multiplied by $15.00. The city agrees that its account in the municipality accumulation fund is to be charged at the time of the member's retirement with an amount equal to the accumulated amount paid by the member for military service credit, multiplied by the city's current service matching ratio in effect at the date the member applies for such military credit.

(Code 1993, § 2-138; Ord. No. 89-16, §§ 1, 2, 10-16-1989)

Sec. 2-150. Restricted prior service credit.

(a) *Authorization.* On the terms and conditions set out in V.T.C.A., Government Code, § 853.305 of subtitle G of title 8, as amended (hereinafter referred to as the "TMRS Act"), each member of the state municipal retirement system (hereinafter referred to as the "system") who is now or who hereafter becomes an employee of this city shall receive restricted prior service credit for service previously performed as an employee of any incorporated city or town in the United States or of any council of governments in this state for which the person has not otherwise received credit service in this system, including combined service credit under V.T.C.A., Government Code ch. 803. The service credit hereby granted may be used only to satisfy length of service requirements for retirement eligibility, has no monetary value in computing the annuity payments allowable to the member, and may not be used in other computations, including computation of updated service credits.

(b) *Requirements.* A member seeking to establish restricted prior service credit under this section must take the action required under said section 853.305 while still an employee of this city.

(c) *Effective date.* Subject to approval by the board of trustees of the system, this section shall be and become effective on September 1, 1994.

(Code 1993, § 2-139; Ord. No. 94-11, 7-18-1994)

Sec. 2-151. Eligibility to retire.

Any employee of the city who is a member of the system is eligible to retire and receive a service retirement annuity if the member has at least 20 years of credited service in the system performed for one or more municipalities that have adopted a like provision under section 854.202(g) of the TMRS Act.

(Ord. No. 2005-08, § 1, 9-27-2005)

Sec. 2-152. Five-year vesting.

Employees who are members of the system may, if they have at least five years of credited sevice with cities that do provide five-year vesting, terminate covered emloyment and remain eligible to retire and receive a service retirement annuity when they have attained an applicable retirement as provided by law.

(Ord. No. 2005-09, § 1, 9-19-2005)

Secs. 2-153—2-168. Reserved.

FOOTNOTE(S):

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State Law reference— Texas Municipal Retirement System generally, V.T.C.A., Government Code ch. 851 et seq. (Back)

DIVISION 4. DEFENSE AND INDEMNIFICATION OF CITY OFFICERS, EMPLOYEES AND VOLUNTEERS

Sec. 2-169. Purpose.

Sec. 2-170. Definitions.

Sec. 2-171. Legal representation.

Sec. 2-172. Indemnification.

Sec. 2-173. Continuation of eligibility.

Sec. 2-174. Subrogation.

Sec. 2-175. Duties and responsibilities of covered persons; termination.

Sec. 2-176. No creation of cause of action.

Sec. 2-177. Assignment prohibited.

Sec. 2-178. Funding.

Secs. 2-179—2-209. Reserved.

Sec. 2-169. Purpose.

To the extent permitted by law, this division establishes the city's policy of providing legal representation and indemnification for officers, employees, and volunteers in instances where claims or lawsuits are brought against such persons. Such legal representation and indemnification is afforded only in accordance with the terms and conditions of this article, and only in the case of a claim or lawsuit arising from an act or omission which occurs in the course and scope of employment by or duties performed for the city.

(Code 1993, § 2-176; Ord. No. 93-04, § 2, 6-7-1993)

Sec. 2-170. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Covered person means a person who is:

(1) An employee of the city;

(2) The mayor or a member of the city council;

(3) A member of a city board, commission or committee created by the Charter or by action of the city council;

(4) A reserve police officer approved by action of the city council; or

(5) A volunteer who is selected by action of the city council.

Indemnification is used interchangeably with "indemnity" and "indemnify," and refers to payment of a loss incurred by a covered person.

Lawsuit is used interchangeably with "cause of action," and refers to a legal action filed in a court of law.

Legal representation is used interchangeably with "defense," and refers to defense by an attorney or attorneys at law in connection with a claim or lawsuit.

Loss means an amount in dollars which a covered person is legally obligated to pay as a result of an act or omission for which the covered person is eligible for indemnification under this article.

(Code 1993, § 2-177; Ord. No. 93-04, § 3, 6-7-1993)

Sec. 2-171. Legal representation.

(a) *Generally.* To the extent permitted by law the city shall, subject to the exclusions stated in this section, provide legal presentation to a covered person for any claim or lawsuit brought against the covered person alleging acts or omissions by the covered person in the course and scope of the covered person's employment by or duties performed for the city. The city will defend any such claim or lawsuit against a covered person even if it is groundless or fraudulent.

(b) *Criminal cases not included; exception.* The provisions of this article do not extend to or include the defense of criminal cases or indemnification in criminal cases; provided, however, the city council may in unusual circumstances extend the benefits of this division, applicable to defense only, to such a criminal case based upon a finding, in accordance with the following requirements of this division, that the facts and circumstances warrant such an extension for the defense of a covered person. Such a defense, if authorized by city council, shall be in accordance with all the requirements and provisions of this chapter, including the determination of eligibility.

(c) *Legal counsel.* Defense provided under this section shall be undertaken by the legal counsel chosen by the city, which may be the city's attorney or regularly employed counsel, unless there is a

potential or actual conflict of interest with the covered person, in which case the city may choose to employ other legal counsel.

(1) Covered persons who wish to select and employ their own legal counsel to handle their defense may do so at their own cost; provided, further, the city shall not be obligated to provide indemnification under this division. Covered persons who wish to select and employ their own legal counsel to assist or advise them personally, without assuming the role of handling their defense, may do so at their own cost; provided, however, such covered person shall also be required to pay to the city all increased costs incurred by the legal counsel selected by the city to handle their defense, which costs are attributable to the actions or requests of their personal legal counsel.

(2) *Handling and resolution of cases.* The city shall retain the right to monitor, investigate, negotiate, settle and manage the defense of any claim or lawsuit as it determines appropriate.

(d) *Costs.* The city will pay all costs associated with the legal representation, including fees of the attorneys selected by the city, court costs, deposition and expert witness fees, and other customary and reasonable costs associated with the preparation and presentation of the covered person's defense.

(e) *Eligibility.* The city shall provide legal representation for a covered person under this division only after a determination in each specific case is made that this division is applicable and the exclusions of this division do not preclude coverage. Further, in the event that the applicable standard of conduct set forth in this division differs from that established by state law, the covered person's eligibility shall be determined by reference to state law.

(1) *Exclusions; determination of eligibility.* Except as provided below in this subsection, the city will not be obligated to provide legal representation under this article if:

a. The claim or lawsuit arises from a cause of action for official misconduct, as provided by V.T.C.A., Civil Practice and Remedies Code ch. 102;

b. The claim or lawsuit arises from a cause of action involving a willful or wrongful act or omission, or an act or omission constituting gross negligence, as provided by V.T.C.A., Civil Practice and Remedies Code ch. 102;

c. The claim or lawsuit arises from an act or omission which constitutes a clear violation of the Charter;

d. The claim or lawsuit arises from an act or omission of the covered person which did not occur in the course and scope of the covered person's employment by or duties performed for the city;

e. Unless there is a determination of eligibility finding that the covered person acted in good faith or in a manner such person reasonably believed to be in accordance with the law, city ordinance, city policy, or the city Charter; or

f. The determination of eligibility for defense shall be promptly made by legal counsel of the city's choice. The determination shall be reported to the mayor and city council in executive session (as authorized by law). The determination of eligibility for defense shall be final, unless provided otherwise by the city council.

(2) *Vindication.* If a covered person has been completely successful (vindicated) on the merits in defense of a claim or lawsuit, and for which coverage under this article was refused based on a determination by legal counsel of ineligibility as provided in this section, it shall be deemed to be a determination that such covered person has met the eligibility requirements of this article, and accordingly, such covered person shall be entitled to reimbursement by the city only for reasonable expenses of defense shown to be incurred on the covered person's behalf. This provision shall not affect the continued applicability of the exclusions which preclude coverage. The determination by the city council of such reasonable expenses shall be final.

(f) *Other exclusions which preclude coverage.* The city shall not be obligated to provided legal representation under this division if:

(1) Legal representation is provided under any policy of insurance or self-insurance plan;

(2) If the claim or lawsuit against the covered person has been brought by or on behalf of the city;

(3) If the claim or lawsuit was initiated by the covered person against the city, any covered person, or any agent or representative of the city;

(4) If the claim or lawsuit arises in connection with the covered person's operation of a city vehicle in the course of personal or private business;

(5) If the liability assumed by the covered person arises under a contract, unless the contract was approved by the city council;

(6) If the claim or lawsuit arises directly or indirectly out of a claim for legal representation or indemnification under this division; or

(7) If the claim or lawsuit is brought or maintained (in whole or in part) by a person or party under any asserted right obtained by any assignment made in connection with this division.

(Code 1993, § 2-178; Ord. No. 93-04, § 4, 6-7-1993)

Sec. 2-172. Indemnification.

To the extent permitted by law the city shall, subject to the exclusions stated in this section, provide indemnification to a covered person for a loss arising from a claim or lawsuit for which the city has an obligation to provide legal representation under this division, or in those cases where the city's insurance provides a defense, but not coverage for the loss.

(1) *Exclusions which preclude coverage.* The city shall not be obligated to pay any loss that:

a. Represents a judgment for exemplary or punitive damages;

b. Represents an award of damages arising out of a cause of action for official misconduct, a willful or wrongful act or omission, or an act or omission constituting gross negligence, as provided by V.T.C.A., Civil Practice and Remedies Code ch. 102; or

c. Represents damages awarded against a covered person to the extent the damages are recoverable under an insurance contract or self-insurance plan.

(2) *Limits of coverage.* The city hereby adopts the limits of coverage (that is, "maximum payments") as provided by ch. 102, "Tort Claims Payments by Local Governments," V.T.C.A., Civil Practice and Remedies Code § 102.003: payments under this article may not exceed $100,000.00 to any one person or $300,000.00 for any single occurrence in the case of personal injury or death, or $10,000.00 for a single occurrence of property damage.

(3) *Overall coverage limitation by the Texas Tort Claims Act.* The limits of coverage set out above are further limited as provided by this subsection. Where multiple claims are made against the city and/or a covered persons for injuries and/or damages from a single occurrence, and where the city's liability is limited by the Texas Tort Claims Act, the total of all payments by the city arising out of the bodily injury or death of any one person shall not exceed $250,000.00 for each person and $500,000.00 for each single occurrence, and $100,000.00 for each single occurrence of injury or destruction of property.

(Code 1993, § 2-179; Ord. No. 93-04, § 5, 6-7-1993)

Sec. 2-173. Continuation of eligibility.

A person who is no longer working for or connected with the city is entitled to coverage under this article for an event that occurred while the person was a covered person, provided the requirements for eligibility under this division are met.

(Code 1993, § 2-180; Ord. No. 93-04, § 6, 6-7-1993)

Sec. 2-174. Subrogation.

If payment or legal representation is provided under this article, the city is subrogated to the covered person's right of recovery against any person or organization to the extent of the city's obligation and payments, and the covered person must execute and deliver to the city whatever documents are necessary to secure those rights. The covered person shall not do anything after a loss to prejudice those rights.

(Code 1993, § 2-181; Ord. No. 93-04, § 7, 6-7-1993)

Sec. 2-175. Duties and responsibilities of covered persons; termination.

In order to receive and keep in force the benefits of the legal representation and indemnification provisions of this article a covered person must:

(1) *Duties and responsibilities.*

a. Notify the city's attorney, in writing, as soon as practicable upon receipt of written notice of a claim or lawsuit, but no later than five working days after receipt;

b. Cooperate with the attorney selected by the city, and, upon the attorney's request, assist in defense, reaching settlements, in the conduct of suits, and in enforcing any right of contribution or indemnity against a person or organization who may be liable to the city because of injury or damage covered under this article;

c. Attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses; and

d. Not, except at the covered person's own cost, voluntarily make any payment, assume any obligation, or incur any expense with respect to a claim or lawsuit without the consent of the city.

(2) *Termination.* The city council may withdraw or terminate the benefits of legal representation and/or indemnification available under this article if a covered person materially violates the provisions of this chapter. Such a termination shall be preceded by ten days' advance written notice from the city to the covered person notifying the covered person of the date of termination.

(Code 1993, § 2-182; Ord. No. 93-04, § 8, 6-7-1993)

Sec. 2-176. No creation of cause of action.

Nothing contained in this division shall be construed or have the effect of creating a right or cause of action against a covered person or the city, nor as giving a right to any third party to institute or maintain a suit which would not otherwise exist under law as a legal claim against a covered person or the city.

(Code 1993, § 2-183; Ord. No. 93-04, § 9, 6-7-1993)

Sec. 2-177. Assignment prohibited.

The assignment of any right, benefit, claim or interest arising in connection with this chapter is strictly prohibited.

(Code 1993, § 2-184; Ord. No. 93-04, § 10, 6-7-1993)

Sec. 2-178. Funding.

To the extent permitted by law and as necessary to fund an obligation, during each year while there is any liability to pay for legal representation or indemnification in accordance with this division, the city council shall compute and ascertain the rate and amount of ad valorem tax, based on the latest approved tax rolls for the city, with full allowances being made for tax delinquencies and costs of tax collection, which will be sufficient to raise and produce the money required to pay any sums due, and in no instance to be less than two percent of such obligation, together with all interest thereon, because of the obligation herein assumed.

(Code 1993, § 2-185; Ord. No. 93-04, § 11, 6-7-1993)

Secs. 2-179—2-209. Reserved.

DIVISION 5. CODE OF ETHICS

Sec. 2-210. Declaration of policy.

Sec. 2-211. Definitions.

Sec. 2-212. Ethical principals.

Sec. 2-213. Standards of conduct.

Sec. 2-214. State laws governing conduct.

Sec. 2-215. Violations.

Secs. 2-216—2-238. Reserved.

Sec. 2-210. Declaration of policy.

(a) It is hereby determined by the city council of the city, that the proper operation of government requires that public officers and employees be independent and impartial; that the government's decisions and policies be made within the proper channels of the governmental structure; that a public office not be used for personal gain; and that the public have confidence in the integrity of its government and its governmental officials.

(b) The purpose of this Code is to enumerate existing state laws which regulate the conduct and activities of city officers and employees, and to promulgate such additional minimum standards as are deemed necessary and appropriate to ensure the faithful and impartial administration of the city's government.

(Code 1993, § 2-191; Ord. No. 93-06, § 1, 5-17-1993)

Sec. 2-211. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City employee means any person employed by the city, including those individuals employed on a part-time basis.

City officer means the mayor, members of the city council, the city manager, city secretary, municipal court judge and clerk, alternate judges, and substitute judges, and each member and alternate member of all of the city boards, commissions and committees.

City official means a city officer or city employee.

(Code 1993, § 2-192; Ord. No. 93-06, § 2, 5-17-1993)

Sec. 2-212. Ethical principals.

The following code of ethics for all city officers and employees is adopted. To further the objectives of this code of ethics, certain ethical principles shall govern the conduct of every officer or employee, who shall:

(1) Be dedicated to the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and confidence of the citizens of the city;

(2) Recognize that the chief function of local government at all times is to serve the best interests of all of the people;

(3) Be dedicated to public service by being cooperative and constructive, and by making the best and most efficient use of available resources;

(4) Refrain from any activity or action that may hinder one's ability to be objective and impartial on any matter coming before the council or the city. Do not seek or accept gifts or special favors; believe that personal gain by use of confidential information or by misuse of public funds or time is dishonest;

(5) Recognize that public and political policy decisions, based on established values, are ultimately the responsibility of the city and city council; and

(6) Conduct business in open, duly noticed meetings in order to be directly accountable to the citizens of the city. It is recognized that certain exceptions are made by the state for executive sessions; however, any action as a result of that type of meeting will be handled later in open session.

(Code 1993, § 2-193; Ord. No. 93-06, § 3, 5-17-1993)

Sec. 2-213. Standards of conduct.

In order to more fully effectuate the policy declared in this code of ethics, to ensure that all city officials act and conduct themselves both inside and outside the city's service so as to give no occasion for distrust of their integrity, and to avoid even the appearance of impropriety by any city official, the following standards of conduct are adopted.

(1) *Grant of special consideration.* No city official shall grant any special consideration, treatment or advantage to any citizen, individual, business organization or group beyond that which is normally available to every other citizen, individual, business organization or group. This shall not prevent special considerations authorized and granted by the city council for the purpose of creating incentives necessary to secure or retain employees.

(2) *Appearances on behalf of private interests.* No city official shall represent or appear on behalf of private interests of others before any agency of the city, or any city board, commission,

committee or city council concerning any case, project or matter over which the official exercises discretionary authority, nor shall a city official represent any private interest of others in any action or proceeding involving the city, nor voluntarily participate on behalf of others in any litigation to which the city is a party.

(3) *Appearances by past officials.* No city official, holding a position which involves decision-making, advisory or supervisory responsibility, shall, within 12 months following the end of service with the city, represent or appear on behalf of private interests of others before the city or any agency thereof concerning any case, project, or matter over which the official has exercised discretionary authority.

(4) *Securing special privileges.* No city official shall use his official position to secure special privilege or exemption for himself or others.

(5) *Gifts.* No city official shall accept or solicit any gift or favor that could reasonably tend to influence that individual in the discharge of official duties or that the official knows or should know has been offered with the intent to influence or reward official conduct.

(6) *Disclosure or use of confidential information.* No city official shall disclose any confidential information gained by reason of his office or employment with the city, concerning any property, operation, policy or affair of the city, or use such confidential information to advance any personal interest, financial or otherwise, of such official or others.

(7) *Incompatible outside activities.* No city official shall engage in any outside activity which will conflict with, or be incompatible with, the city office or employment.

(8) *Incompatible employment.* No city official shall accept outside employment which is incompatible with the full and proper discharge of his duties and responsibilities with the city, or which might impair his independent judgment in the performance of his public duty.

(9) *Use of city property for personal use.* No city official shall use city supplies, equipment, vehicles or facilities for any purpose other than the conduct of official city business, unless otherwise specifically provided for by law, ordinance or city policy.

(Code 1993, § 2-194; Ord. No. 93-06, § 4, 5-17-1993)

Sec. 2-214. State laws governing conduct.

(a) *Conflicts of interest.*

(1) Pursuant to V.T.C.A., Local Government Code, ch. 171, a local public official having a substantial interest in a business entity or piece of real property must file, before any vote or decision is made on any matter affecting the business entity or real property, an affidavit stating the nature and extent of the interest. The official must file the affidavit with the city secretary, and is required to abstain from any further participation in the matter if:

a. The proposed action would have a special economic effect on the business entity that is distinguishable from the effect on the public; or

b. It is reasonably foreseeable that the action would have a special economic effect on the value of the real property which is distinguishable from its effect on the public. An exception to the abstention rule is provided in cases where a majority of members of the entity are likewise required to and do file affidavits.

(2) A substantial interest in a business entity exists when the official:

a. Owns ten percent or more of the voting stock or shares of the business entity;

b. Owns ten percent or more or $5,000.00 or more of the fair market value of the business entity; or

c. Has received from the business entity funds which exceed ten percent of the official's gross income for the prior year.

(3) A substantial interest in real property exists when the official has an equitable or legal interest in such property which has a fair market value of $2,500.00 or more.

(4) A local public official means a member of the city council or other official of the city, paid or unpaid, who exercises responsibilities which are more than advisory only. A business entity means any entity recognized by law.

(5) It is an offense for a local public official to act as a surety for a business entity that is contracting with the city, or to act a surety on any official bond required of an officer of the city.

State law reference— Similar provisions V.T.C.A., Local Government Code § 171.003.

(6) A local public official is considered to have a substantial interest if a person related to the official in the first degree by consanguinity or affinity has a substantial interest.

State law reference— Similar provisions, V.T.C.A., Local Government Code § 171.002(c).

(7) The provisions of V.T.C.A., Local Government Code, ch. 171, are in addition to any other municipal charter provisions or municipal ordinances defining and prohibiting conflicts of interest.

(b) *Bribery.* It is unlawful for a city official to accept or agree to accept:

(1) Any benefit as consideration for a decision, opinion, recommendation, vote or other exercise of discretion as a public servant;

(2) Any benefit as consideration for a decision, vote, recommendation or other exercise of official discretion in a judicial or administrative proceeding; or

(3) Any benefit as consideration for a violation of a duty imposed by law on a public servant.

State law reference— Similar provisions, V.T.C.A., Penal Code § 36.02.

(c) *Gifts to public servants.*

(1) It is unlawful for a city official to solicit, accept or agree to accept any benefit from a person the official knows is subject to regulation, inspection or investigation by the official or the city.

State law reference— Similar provisions, V.T.C.A., Penal Code § 36.08(a).

(2) In the event of litigation involving the city, it is unlawful for any city official to solicit, accept or agree to accept any benefit from a person against whom the official knows litigation is pending or contemplated by the official or the city.

State law reference— Similar provisions, V.T.C.A., Penal Code § 36.08(c).

(3) It is unlawful for a city official who exercises discretion in connection with contracts, purchases, payments, claims or other pecuniary transactions of government to solicit, accept or agree to accept any benefit from a person the official knows is interested in or likely to become interested in any contract, purchase, payment, claim or transaction involving the exercise of his discretion.

State law reference— Similar provisions, V.T.C.A., Penal Code § 36.08(d).

(4) It is unlawful for a city official who has judicial or administrative authority, is employed by or in a tribunal having judicial or administrative authority, or who participates in the enforcement of the tribunal's decision, to solicit, accept or agree to accept any benefit from a person the official knows is interested in or likely to become interested in any matter before the official or tribunal.

State law reference— Similar provisions, V.T.C.A., Penal Code § 36.08(e).

(5) Exceptions to gifts to public servants. The provisions of V.T.C.A., Penal Code § 36.08, described in subsections (c)(1) thru (4) of this section, do not apply to:

a. Fees prescribed by law to be received by the public official or any other benefit to which the official is lawfully entitled and for which the official has given legitimate consideration;

b. Gifts or other benefits conferred on account of kinship or personal, professional, or business relationships independent of the official's status with the city;

c. Certain honorariums in consideration of legitimate services;

d. Benefits consisting of food, lodging, transportation or entertainment accepted as a guest and reported as required by law; or

e. Benefits for which statements must be filed pursuant to V.T.C.A., Election Code §§ 251.011 and 251.012, if the benefit and source of any benefit exceeding $50.00 is reported and the benefit is used solely to defray expenses which accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the city.

State law reference— Similar provisions, V.T.C.A., Penal Code § 36.10.

(d) *Tampering with governmental records.* It is unlawful for any person to knowingly make a false entry in, or false alteration of, a governmental record, or to make, present, or use any record, document, or thing with knowledge of its falsity with the intent that it be taken as a genuine governmental record, or to intentionally destroy, conceal, remove or otherwise impair the verity, legibility or availability of a governmental record.

State law reference— Similar provisions, V.T.C.A., Penal Code, § 37.10.

(e) *Impersonating public servant.* It is unlawful for any person to impersonate a city official with intent to induce another to submit to his pretended official authority or to rely on his pretended official acts.

State law reference— Similar provisions, V.T.C.A., Penal Code § 37.11.

(f) *Misuse of official information.* It is unlawful for a city official, in reliance on information to which he has access as a result of his office and which has not been made public, to acquire or aid another in acquiring a pecuniary interest in any property, transaction or enterprise that may be affected by the information or to speculate or aid another in speculating on the basis of the information.

State law reference— Similar provisions, V.T.C.A., Penal Code § 39.03.

(g) *Disrupting meeting or procession.* It is unlawful for any person, with intent to prevent or disrupt a lawful meeting, to obstruct or interfere with the meeting by physical action or verbal utterance.

State law reference— Similar provisions, V.T.C.A., Penal Code § 42.05.

(h) *Official oppression.* It is unlawful for a city official to intentionally subject another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment or lien that he knows is unlawful, to intentionally deny or impede another in the exercise or enjoyment of any right, privilege, power or immunity, knowing his conduct is unlawful, or to intentionally subject another to sexual harassment.

State law reference— Similar provisions, V.T.C.A., Penal Code § 39.02.

(i) *Official misconduct.* It is unlawful for a city official, with intent to obtain a benefit or with intent to harm another, to intentionally or knowingly violate a law relating to his office or employment or to misapply any thing of value belonging to the government that has come into his custody or possession by virtue of his office or employment.

State law reference— Similar provisions, V.T.C.A., Penal Code § 39.01.

(j) *Nepotism.* The following provisions shall apply:

(1) It is unlawful for any city official to appoint, or vote for the appointment, to any office, employment or duty, of any person related within the second degree by affinity or within the third degree by consanguinity to the person so appointing or so voting, or to any other member of a board or governing body to which the person so voting or appointing may be a member, when the salary, fees or compensation of such appointee is to be paid out of public funds. An exception is provided for persons who have been continuously employed in such office, employment or duty for the following periods prior to the election or appointment, as applicable, of the officer or member related to such employee in the prohibited degree:

a. At least 30 days, if the officer or member is appointed; or

b. At least six months, if the officer or member is elected.

(2) When a person is allowed to continue in an office, position or duty because of an exception above, the officer who is related to such person in the prohibited degree shall not participate in the deliberation or voting upon the appointment, reappointment, employment, confirmation, reemployment, change in status, compensation or dismissal of such person, if such action applies only to such person and is not taken with respect to a bona fide class or category of employees.

Charter reference— Similar provisions, § 6.05.

State law reference— Similar provisions, V.T.C.A., Government Code § 573.041.

(k) *Disclosure of interest in property.* It is unlawful for a city official, or a person elected, appointed or employed as a city official but for which office such person has not yet qualified, to fail to make public disclosure of any legal or equitable interest he may have in property which is acquired with public funds, provided such official has actual notice of the acquisition or intended acquisition. The public disclosure required is the filing of an affidavit with the county clerks of all counties in which the property is located and wherein the official resides at least ten days prior to the acquisition.

Charter reference— Conflict of interest in city contracts, § 6.07.

State law reference— Similar provisions, V.T.C.A., Government Code § 553.02.

(Code 1993, § 2-195; Ord. No. 93-06, § 5, 5-17-1993)

Sec. 2-215. Violations.

(a) Any person violating any standard contained in section 2-213 shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not to exceed $500.00. Each day of violation shall constitute a separate offense.

(b) Penalties for violations of conduct described in section 2-214 are as set forth in the applicable statutory provision.

(Code 1993, § 2-196; Ord. No. 93-06, § 6, 5-17-1993)

Secs. 2-216—2-238. Reserved.

ARTICLE IV. FINANCE [6]

DIVISION 1. - GENERALLY

DIVISION 2. - TOMBALL LEGACY FUND

FOOTNOTE(S):

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State Law reference— V.T.C.A., Finance Code ch. 1 et seq.; finances, V.T.C.A., Local Government Code ch. 101 et seq. (Back)

DIVISION 1. GENERALLY

Sec. 2-239. Returned check fee.

Sec. 2-240. Fees for accounts receivable.

Secs. 2-241—2-258. Reserved.

Sec. 2-239. Returned check fee.

The city shall impose a penalty for all checks given to the city for debts owed, when such checks are returned by the financial institution. The amount of such penalty shall be as determined from time to time by resolution of the city council.

(Code 1978, § 22.5-1; Code 1993, § 2-201; Ord. No. 2003-15, § 1, 11-3-2003)

Sec. 2-240. Fees for accounts receivable.

In accordance with V.T.C.A., Code of Criminal Procedure art. 103.0031, there shall be imposed an additional fee of 30 percent on all debts and accounts receivable, i.e.: fines, fees, restitution, other debts, and costs that are more than 60 days past due and have been referred to a private firm for collection.

(Ord. No. 2008-16, 7-21-2008)

Secs. 2-241—2-258. Reserved.

DIVISION 2. TOMBALL LEGACY FUND

Sec. 2-259. Members.

Sec. 2-260. Selection and term.

Sec. 2-261. Publication; effective date; open meetings.

Secs. 2-262—2-287. Reserved.

Sec. 2-259. Members.

The Tomball Legacy Fund Board, Inc. shall be composed of seven individuals. Positions one through six shall be filled by six members who shall be the members of the city council of the city; position seven shall be filled by one member who shall be appointed by city council.

(Ord. No. 2013-08, § 2.0, 8-5-2013)

Sec. 2-260. Selection and term.

(a) The mayor and city councilmembers shall serve in such capacity for a period coinciding with their respective terms of office with the city. Directors in positions one through six must reside within the city and if such residence ceases, it shall be deemed as a resignation. The director for position seven is not required to reside within the city and his term of office shall coincide with the term of the mayor. Directors are removable by the governing body of the city at any time without cause. The directors shall serve without compensation, unless compensation is proposed and approved by the city's governing body, said compensation in no event to exceed the compensation of the elected officers of the city's governing body, except that such directors shall be reimbursed for their actual expenses incurred in the performance of their duties. Any vacancy occurring on the board of directors through death, resignation, or otherwise shall be filled by appointment by the governing body of the city, said appointee to hold office until the expiration of the relinquished term.

(b) The periods of service of the members shall, for purpose of this division, commence on August 5, 2013, and expire as noted in subsection (a) of this section.

(Ord. No. 2013-08, § 3.0, 8-5-2013)

Sec. 2-261. Publication; effective date; open meetings.

(a) The city secretary of the city is hereby directed to publish this division in the official newspaper of the city, in compliance with the provisions of section 6.14(A) of the Charter, which publication shall be sufficient if it contains the caption of this division. The ordinance shall be effective after the publication requirement of the Charter is satisfied.

(b) It is found and determined that the meetings at which this division was considered were open to the public, as required by the Texas Open Meetings Act and that advance public notice of the time, place, and purpose of the meetings was given.

(Ord. No. 2013-08, § 4., 8-5-2013)

Secs. 2-262—2-287. Reserved.

ARTICLE V. RECORDS MANAGEMENT [7]

DIVISION 1. - GENERALLY

DIVISION 2. - RECORDS MANAGEMENT OFFICER

DIVISION 3. - RECORDS LIAISON OFFICERS

FOOTNOTE(S):

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State Law reference— Local government records, V.T.C.A., Local Government Code ch. 201; local government records management program to be established, V.T.C.A., Local Government Code § 203.026. (Back)

DIVISION 1. GENERALLY

Sec. 2-288. Definitions.

Sec. 2-289. Declaration of local municipal government records.

Sec. 2-290. Local municipal records declared public property.

Sec. 2-291. Policy.

Sec. 2-292. Records management plan.

Sec. 2-293. Duties and responsibilities of department heads.

Sec. 2-294. Records control schedules—Approval; filing with state.

Sec. 2-295. Same—Implementation; destruction of records under schedule.

Sec. 2-296. Destruction of unscheduled records.

Secs. 2-297—2-325. Reserved.

Sec. 2-288. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Department head means the officer who by ordinance, order, or administrative policy is in charge of an office of the city that creates or receives records.

Essential record means any record of the city necessary to the resumption or continuation of operations of the city in an emergency or disaster, to the recreation of the legal and financial status of the city, or to the protection and fulfillment of obligations to the people of the state.

Permanent record means any record of the city for which the retention period on a records control schedule is given as permanent.

Records control schedule means a document prepared by or under the authority of the records management officer listing the records maintained by the city, their retention periods, and other records disposition information that the records management program may require.

Records liaison officers mean the persons designated under section 2-358.

Records management means the application of management techniques to the creation, use, maintenance, retention, preservation, and disposal of records for the purposes of reducing the costs and improving the efficiency of recordkeeping. The term "records management" includes the development of records control schedules, the management of filing and information retrieval systems, the protection of essential and permanent records, the economical and space-effective storage of inactive records, control over the creation and distribution of forms, reports, and correspondence, and the management of micrographics and electronic and other records storage systems.

Records management officer means the person designated in section 2-326.

Records management plan means the plan developed under section 2-327.

Retention period means the minimum time that must pass after the creation, recording, or receipt of a record, or the fulfillment of certain actions associated with a record, before it is eligible for destruction.

(Code 1993, § 2-216; Ord. No. 90-10, § 2, 12-17-1990)

Sec. 2-289. Declaration of local municipal government records.

All documents, papers, letters, books, maps, photographs, sound or video recordings, microfilm, magnetic tape, electronic media or other information recording media, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by the city or any of its officers or employees pursuant to law or in the transaction of public business are hereby declared to be the records of the city and shall be created, maintained, and disposed of in accordance with the provisions of this article or procedures authorized by it and in no other manner.

(Code 1993, § 2-217; Ord. No. 90-10, § 1, 12-17-1990)

Sec. 2-290. Local municipal records declared public property.

All local municipal government records are hereby declared to be the property of the city. No local municipal government official or employee has, by virtue of his position, any personal or property right to such records even though he may have developed or compiled them. The unauthorized destruction, removal from files, or use of such records is prohibited.

(Code 1993, § 2-218; Ord. No. 90-10, § 3, 12-17-1990)

Sec. 2-291. Policy.

It is hereby declared to be the policy of the city to provide for efficient, economical and effective controls over the creation, distribution, organization, maintenance, use and disposition of all local municipal government records through a comprehensive system of integrated procedures for the management of records from their creation to their ultimate disposition, consistent with the requirements of the Texas Local Government Records Act, V.T.C.A., Local Government Code ch. 201, and accepted records management practice.

(Code 1993, § 2-219; Ord. No. 90-10, § 4, 12-17-1990)

Sec. 2-292. Records management plan.

(a) The records management officer shall develop a records management plan for the city for submission to the city council. The plan must contain policies and procedures designed to reduce the costs and improve the efficiency of recordkeeping, to adequately protect the essential records of the city, and to properly preserve those records of the city that are of historical value. The plan must be designed to enable the records management officer to carry out his duties prescribed by state law and this article effectively.

(b) Once approved by the city council, the records management plan shall be binding on all offices, departments, divisions, programs, commissions, bureaus, boards, committees or similar entities of the city and records shall be created, maintained, stored, microfilmed or disposed of in accordance with the plan.

(c) State law relating to the duties, other responsibilities, or recordkeeping requirements of a department head do not exempt the department head or the records in the department head's care from the application of this article and the records management plan adopted under it and may not be used by the department head as a basis for refusal to participate in the records management program of the city.

(Code 1993, § 2-220; Ord. No. 90-10, § 6, 12-17-1990)

Sec. 2-293. Duties and responsibilities of department heads.

In addition to other duties assigned in this article, department heads shall:

(1) Cooperate with the records management officer in carrying out the policies and procedures established in the city for the efficient and economical management of records and in carrying out the requirements of this article;

(2) Adequately document the transaction of government business and the services, programs and duties for which the department head and his staff are responsible; and

(3) Maintain the records in his care and carry out their preservation, microfilming, destruction or other disposition only in accordance with the policies and procedures of the records management program of the city and the requirements of this article.

(Code 1993, § 2-221; Ord. No. 90-10, § 8, 12-17-1990)

Sec. 2-294. Records control schedules—Approval; filing with state.

(a) The city hereby adopts the appropriate records control schedules issued by the state library and archives commission for use in the city, as provided by law. Any destruction of records of the city will be in accordance with these schedules and the Local Government Records Act.

(b) The records management officer, in cooperation with department heads and records liaison officers, shall maintain an inventory, on a department-by-department basis, listing all records archived by the department and the retention period for each record. Records control schedules shall also contain such other information regarding the disposition of local municipal government records as the records management plan may require.

(c) The records management officer will monitor the appropriate records control schedules issued by the state library and archives commission to ensure that the city is in compliance with the records retention schedules issued by the state and the records management program of the city.

(d) Before implementation of the records control schedules issued by the state library and archives commission, Ord. No. 2012-04, adopting the state library and archives commission records control schedules shall be submitted to and accepted for filing by the director and librarian of the state library and archives commission as provided by state law. If Ord. No. 2012-04 is not accepted for filing, the

ordinance shall be amended to make it acceptable for filing with the state and presented to council, after which the records management officer shall submit the amended ordinance to the director and librarian.

(Code 1993, § 2-222; Ord. No. 90-10, § 11, 12-17-1990; Ord. No. 2012-04, §, 2, 4-2-2012)

Sec. 2-295. Same—Implementation; destruction of records under schedule.

(a) A records control schedule for a department that has been approved and adopted under section 2-327 shall be implemented by department heads and records liaison officers according to the policies and procedures of the records management plan.

(b) A record whose retention period has expired on a records control schedule shall be destroyed unless an open records request is pending on the record, the subject matter of the record is pertinent to a pending law suit, or the department head requests in writing to the records management officer that the record be retained for an additional period.

(c) Prior to the destruction of a record under an approved records control schedule, authorization for the destruction must be obtained by the department head or records liaison officers from the records management officer.

(Code 1993, § 2-223; Ord. No. 90-10, § 12, 12-17-1990)

Sec. 2-296. Destruction of unscheduled records.

A record that has not yet been listed on an approved records control schedule may be destroyed if its destruction has been approved in the same manner as a record destroyed under an approved schedule and the records management officer has submitted to and received back from the director and librarian an approved destruction authorization request.

(Code 1993, § 2-224; Ord. No. 90-10, § 13, 12-17-1990)

Secs. 2-297—2-325. Reserved.

DIVISION 2. RECORDS MANAGEMENT OFFICER

Sec. 2-326. Designated.

Sec. 2-327. Duties.

Secs. 2-328—2-357. Reserved.

Sec. 2-326. Designated.

The city council shall designate an individual employed by the city to serve as records management officer for the city. Upon the resignation, retirement, dismissal or removal by action of the city council of the individual so designated, the city council shall promptly designate another individual to serve as records management officer. The individual designated as records management officer shall file his name with the director and librarian of the state library within 30 days of the date of designation, as provided by state law.

(Code 1993, § 2-236; Ord. No. 90-10, § 5, 12-17-1990)

Sec. 2-327. Duties.

In addition to other duties assigned in this article, the records management officer shall:

(1) Administer the records management program and provide assistance to department heads in its implementation;

(2) Plan, formulate and prescribe records disposition policies, systems, standards and procedures;

(3) In cooperation with department heads identify essential records and establish a disaster plan for each local municipal government office and department to ensure maximum availability of the records in order to re-establish operations quickly and with minimum disruption and expense;

(4) Develop procedures to ensure the permanent preservation of the historically valuable records of the local municipal government;

(5) Establish standards for filing and storage equipment and for recordkeeping supplies;

(6) Study the feasibility of and, if appropriate, establish a uniform filing system and a forms design and control system for the city;

(7) Provide records management advice and assistance to all local municipal government departments by preparation of a manual or manuals of procedure and policy and by on-site consultation;

(8) Monitor records retention schedules and administrative rules issued by the state library and archives commission to determine if the records management program and the local municipal government's records control schedules are in compliance with state regulations;

(9) Disseminate to the city council and department heads information concerning state laws and administrative rules relating to local government records;

(10) Instruct records liaison officers and other personnel in policies and procedures of the records management plan and their duties in the records management program;

(11) Direct records liaison officers or other personnel in the conduct of records inventories in preparation for the development of records control schedules as required by state law and this article;

(12) Ensure that the maintenance, preservation, microfilming, destruction or other disposition of local municipal government is carried out in accordance with the policies and procedures of the records management program and the requirements of state law;

(13) Maintain records on the volume of records destroyed under approved records control schedules, the volume of records microfilmed or stored electronically, and the estimated cost and space savings as the result of such disposal or disposition;

(14) Report annually to the city council on the implementation of the records management plan in each department of the city, including summaries of the statistical and fiscal data compiled under subsection (13) of this section; and

(15) Bring to the attention of the city council noncompliance by department heads or other local municipal government personnel with the policies and procedures of the records management program or the Local Government Records Act.

(Code 1993, § 2-237; Ord. No. 90-10, § 7, 12-17-1990)

Secs. 2-328—2-357. Reserved.

DIVISION 3. RECORDS LIAISON OFFICERS

Sec. 2-358. Designation.

Sec. 2-359. Duties and responsibilities.

Secs. 2-360—2-376. Reserved.

Sec. 2-358. Designation.

Each department head shall designate a member of his staff to serve as records liaison officer for the implementation of the records management program in the department. If the records management officer determines that in the best interests of the records management program more than one records liaison officer should be designated for a department, the department head shall designate the number of records liaison officers specified by the records management officer. Persons designated as records liaison officers shall be thoroughly familiar with all the records created and maintained by the department and shall have full access to all records of the city maintained by the department. Upon the resignation, retirement, dismissal or removal by action of the department head of a person designated as a records liaison officer, the department head shall promptly designate another person to fill the vacancy. A department head may serve as records liaison officer for his department.

(Code 1993, § 2-251; Ord. No. 90-10, § 9, 12-17-1990)

Sec. 2-359. Duties and responsibilities.

In addition to other duties assigned in this article, records liaison officers shall:

(1) Conduct or supervise the conduct of inventories of the records of the department in preparation for the development of records control schedules;

(2) In cooperation with the records management officer, coordinate and implement the policies and procedures of the records management program in their departments; and

(3) Disseminate information to department staff concerning the records management program.

(Code 1993, § 2-252; Ord. No. 90-10, § 10, 12-17-1990)

Secs. 2-360—2-376. Reserved.

ARTICLE VI. BOARDS AND COMMISSIONS

DIVISION 1. - GENERALLY

DIVISION 2. - CHARTER REVIEW COMMISSION

DIVISION 3. - PUBLIC ACCESS REVIEW BOARD

DIVISION 1. GENERALLY

Secs. 2-377—2-426. Reserved.

Secs. 2-377—2-426. Reserved.

DIVISION 2. CHARTER REVIEW COMMISSION

Sec. 2-427. Established; schedule.

Sec. 2-428. Members and service.

Sec. 2-429. Duties.

Sec. 2-430. Monthly reports to council.

Sec. 2-431. Notification of absence; removal for absence.

Sec. 2-432. Procedures.

Secs. 2-433—2-462. Reserved.

Sec. 2-427. Established; schedule.

(a) The city council hereby establishes the charter review commission ("commission") to study the Charter and to consider and review proposed amendments to the Charter, subject to the provisions and terms of this division. The charter review commission will perform its duties and functions in accordance with the following schedule, subject to such extension, if any, as the city council determines is appropriate. Further, the city council may conclude or disband the charter review commission at any time the city council determines it has completed its duties, or as the city council otherwise determines appropriate.

(b) Schedule. The following schedule shall apply:

(1) By December 16, 2013, the charter review commission shall report in writing all proposed amendments to the city council in final report form.

(2) By December 16, 2013, the city council shall review the form of all proposed charter amendments. The city council may request such assistance from the commission as it determines appropriate.

(3) By January 6, 2014, the city council shall adopt an ordinance containing the proposed charter amendments and calling the special election to consider the proposed charter amendments at the May 10, 2014, election date, as provided by the Texas Election Code.

(Ord. No. 2013-10, § 2.0, 8-19-2013)

Sec. 2-428. Members and service.

The mayor and city council shall select 13 members to serve on the commission and shall select members to fill any vacancies; each councilmember shall select two individuals to serve on the commission and the mayor shall select three individuals to serve on the commission. A member shall serve at the pleasure of the city council, shall have no expectation of continued service on the commission, and may be removed by the city council at any time, with or without cause.

(Ord. No. 2013-10, § 3.0, 8-19-2013)

Sec. 2-429. Duties.

It shall be the duty of the commission to study, consider, and review the Charter and those proposed Charter amendments:

(1) Proposed by the Texas Municipal League;

(2) Proposed by the city council, after a vote referring such proposals to the commission; and

(3) Those amendments the commission determines are warranted and in the best interests of the city.

(Ord. No. 2013-10, § 4.0, 8-19-2013)

Sec. 2-430. Monthly reports to council.

The charter review commission shall report at least monthly to the city council concerning its activities, and such report shall be given during a regular meeting of the city council.

(Ord. No. 2013-10, § 5.0, 8-19-2013)

Sec. 2-431. Notification of absence; removal for absence.

Members shall notify the commission in advance, if practicable, if unable to attend any commission meeting. A commission member who is absent from three consecutive meetings shall be subject to removal by the city council.

(Ord. No. 2013-10, § 6.0, 8-19-2013)

Sec. 2-432. Procedures.

(a) *Vote.* Each member in attendance at a duly called and noticed meeting may vote.

(b) *Officers.* The city council shall designate the chairman of the commission. The commission shall elect a vice-chairman from among its members. The city secretary shall serve as the secretary to the commission, posting the required notices and recording the minutes of meetings.

(c) *Power to employ qualified persons.* The commission shall have the power to employ such qualified persons and incur such expenses as may be necessary for the proper conduct and undertaking of its functions and meetings, subject to express, advance written approval of such service and expenses by the city manager.

(d) *Function.* The commission shall function as a whole, subject to the quorum requirements established in this section, without subcommittees.

(e) *Rules.* The following rules shall govern the commission:

(1) *Open meetings, open records.* The commission shall comply with all open meetings and open records laws, post open meeting notices (agendas), keep minutes of its proceedings, and shall keep records of its examinations and other official actions, all of which shall be promptly filed in the office of the city secretary.

(2) *Quorum.* All matters to be heard by the commission shall always be considered by a minimum of seven members, which shall be the quorum necessary for conducting a meeting. The concurring vote of a majority of the members in attendance shall be necessary for the passage of any motion.

(Ord. No. 2013-10, § 7.0, 8-19-2013)

Secs. 2-433—2-462. Reserved.

DIVISION 3. PUBLIC ACCESS REVIEW BOARD

Sec. 2-463. Members.

Sec. 2-464. Selection and term.

Sec. 2-465. Conditions of service.

Sec. 2-466. Duties.

Sec. 2-467. Procedures.

Sec. 2-463. Members.

The public access review board shall be composed of five individuals who shall be residents of the city.

(Code 1993, § 2-311; Ord. No. 94-09, § 2.0, 5-16-1994)

Sec. 2-464. Selection and term.

The mayor and city council shall select and the city council shall appoint the members of the public access review board, who shall serve in such capacity for a period of not more than three years; provided however, a member may be selected to serve for an additional period or periods. Each position on the board shall be given a number and the terms shall be staggered as set out below. The initial assignment of position numbers to those persons selected will be assigned by the mayor and city council at the time of selection.

(1) The periods of service of the members shall, for purpose of this division, commence on June 1, 1994, and expire as noted below:

a. Position one—A term of one year, expiring June 1, 1995.

b. Position two—A term of two years, expiring June 1, 1996.

c. Position three—A term of two years, expiring June 1, 1996.

d. Position four—A term of three years, expiring June 1, 1997.

e. Position five—A term of three years, expiring June 1, 1997.

(2) All future appointments of the public access review board members shall be for a term of three years.

(3) Vacancies for the unexpired period of service of any member whose position becomes vacant shall be filled by appointment by the city council.

(Code 1993, § 2-312; Ord. No. 94-09, § 3.0, 5-16-1994)

Sec. 2-465. Conditions of service.

(a) Members of the public access review board shall serve without compensation.

(b) Members shall serve at the pleasure of the city council and are subject to removal by the city council at any time, with or without cause, and shall have no expectation of continued service either in the position or on the board.

(c) A member who is absent from three consecutive meetings of the board shall be subject to removal by city council.

(Code 1993, § 2-313; Ord. No. 94-09, § 4, 5-16-1994)

Sec. 2-466. Duties.

It shall be the duty of the board to coordinate, review, and keep the city council apprised of the board's activities. The board shall advise the council if any proposed programming does not promote the free exchange of ideas, education, information and understanding in the public interest of the citizens of the city.

(Code 1993, § 2-314; Ord. No. 94-09, § 5, 5-16-1994)

Sec. 2-467. Procedures.

(a) *Officers.* The public access review board shall annually elect a chairperson, vice-chairperson and secretary from among its members.

(b) *Function as a whole.* The board shall function as a whole, subject to the quorum requirements established in this section.

(c) *Minimum of three members necessary.* All matters to be heard or reviewed by the board shall always be considered by a minimum of three members, which shall be the quorum necessary for conducting a meeting.

(d) *Comply with official actions.* The board shall comply with all open meetings and open records laws, post open meeting notices (agendas), keep minutes of its proceedings and other official actions, all of which shall be promptly filed in the office of the city secretary.

(Code 1993, § 2-315; Ord. No. 94-09, § 6, 5-16-1994; Ord. No. 94-22, 11-7-1994)

Chapter 3 RESERVED

Chapter 4 ALCOHOLIC BEVERAGES [1]

ARTICLE I. - IN GENERAL

ARTICLE II. - LICENSE

ARTICLE III. - PROHIBITION OF NUDITY IN COMMERCIAL ESTABLISHMENTS SERVING OR PERMITTING THE CONSUMPTION OF ALCOHOLIC BEVERAGES

FOOTNOTE(S):

--- (**1**) ---

State Law reference— Alcoholic beverages generally, V.T.C.A., Alcoholic Beverage Code ch. 1 et seq.; local regulation of alcoholic beverages, V.T.C.A., Alcoholic Beverage Code §§ 11.38, 61.36, 109.31 et seq., local option elections, V.T.C.A., Alcoholic Beverage Code § 251.01 et seq. (Back)

ARTICLE I. IN GENERAL

Sec. 4-1. Definitions.

Sec. 4-2. Location restricted for sale.

Secs. 4-3—4-22. Reserved.

Sec. 4-1. Definitions.

For the purposes of this chapter, all definitions of words, terms, and phrases, as set forth in the Alcoholic Beverage Code, are hereby adopted and made a part hereof by reference.

(Code 1978, § 3-1; Code 1993, § 6-1)

State law reference— Definitions, V.T.C.A., Alcoholic Beverage Code § 1.04.

Sec. 4-2. Location restricted for sale.

The sale of alcoholic beverages within 300 feet of any church, public or private school or public hospital, within the corporate limits of the city, is hereby prohibited. Measurement shall be done as required by V.T.C.A., Alcoholic Beverage Code § 109.33.

(Code 1978, § 3-2; Code 1993, § 6-2)

State law reference— Location restrictions, V.T.C.A., Alcoholic Beverage Code § 109.33.

Secs. 4-3—4-22. Reserved.

ARTICLE II. LICENSE [2]

Sec. 4-23. Required.

Sec. 4-24. Fees.

Sec. 4-25. Termination.

Sec. 4-26. Prerequisites to issuance, effect of issuance.

Sec. 4-27. Conduct of business.

Secs. 4-28—4-57. Reserved.

Sec. 4-23. Required.

No person shall manufacture, sell, distribute or store any alcoholic beverage, or engage in any other activity with relation to the same for which a permit is required by V.T.C.A., Alcoholic Beverage Code ch. 1 et seq., within the city without first obtaining a license so to do from the city.

(Code 1978, § 3-16; Code 1993, § 6-26)

State law reference— State alcoholic beverage permits, V.T.C.A., Alcoholic Beverage Code ch. 11 et seq.; state license required, V.T.C.A., Alcoholic Beverage Code § 61.01.

Sec. 4-24. Fees.

Before any license is issued under the provisions of this article, the applicant therefor shall pay to the city such fees as are authorized by state law.

(Code 1978, § 3-18; Code 1993, § 6-28)

State law reference— Authority to levy fee for alcoholic beverages, V.T.C.A., Alcoholic Beverage Code §§ 11.38, 61.36; authority to levy fee for beer, V.T.C.A., Alcoholic Beverage Code § 61.01.

Sec. 4-25. Termination.

All licenses issued under the terms of this article shall terminate two years from the date issued. No license shall be issued for a longer term than two years.

(Code 1978, § 3-19; Code 1993, § 6-29)

State law reference— Similar provisions, V.T.C.A., Alcoholic Beverage Code § 11.09; expiration or suspension of license, V.T.C.A., Alcoholic Beverage Code § 61.03.

Sec. 4-26. Prerequisites to issuance, effect of issuance.

Upon the payment of the applicable tax or fee prescribed by this article to the city tax assessor and collector, and exhibition to him of a permit duly issued by the state to the applicant or person paying such tax or fee, the tax assessor and collector shall, in the name of the city, issue and deliver to such applicant or person a permit or license to engage in business in the city of the character described in and authorized by the permit from the state held by such applicant or person. The permit so issued in the name of the city shall authorize the conduct of such business upon the premises described in the permit from the state and shall remain in force only so long as such permit from the state remains in force or until revoked for cause.

(Code 1978, § 3-20; Code 1993, § 6-30)

Sec. 4-27. Conduct of business.

The conduct of business of the holder of any license issued under this article shall be governed by and subject to all general state laws, civil or penal, or provisions of this Code and ordinances of the city.

(Code 1978, § 3-21; Code 1993, § 6-31)

Secs. 4-28—4-57. Reserved.

FOOTNOTE(S):

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State Law reference— Alcoholic beverage licenses, V.T.C.A., Alcoholic Beverage Code ch. 61 et seq. (Back)

ARTICLE III. PROHIBITION OF NUDITY IN COMMERCIAL ESTABLISHMENTS SERVING OR PERMITTING THE CONSUMPTION OF ALCOHOLIC BEVERAGES

Sec. 4-58. Purpose.

Sec. 4-59. Prohibition.

Sec. 4-60. Injunctive relief.

Sec. 4-58. Purpose.

The purpose of this article is to prohibit certain acts of commercial exploitation of human sexuality in commercial establishments within the city limits of the city, where alcoholic beverages are served, offered for sale for consumption on the premises, or permitted to be consumed on the premises, and to reduce the likelihood of criminal activity, moral degradation and disturbances of the peace and good order of the community, to prohibit lewd and unlawful activity, such as prostitution and the proliferation of controlled substances, all of which may occur when such commercial exploitation is permitted in such places, and to promote the preservation of property values of neighborhoods and adjacent properties.

(Code 1993, § 18-25; Ord. No. 97-12, § 1, 7-7-1997)

Sec. 4-59. Prohibition.

(a) It shall be unlawful for any person maintaining, owning, or operating a commercial establishment located within the boundaries of the city, at which alcoholic beverages are served or offered for sale for consumption on the premises, or at which alcoholic beverages are permitted to be consumed:

  (1) To suffer or permit any female person, while on the premises of said commercial establishment, to expose that area of the human female breast at or below the top of the areola thereof;

  (2) To suffer or permit any female person, while on the premises of said commercial establishment, to use any device or covering which is intended to give the appearance of or simulate such portions of the human female breasts as described in subsection (a)(1) of this section;

  (3) To suffer or permit any person, while on the premises of said commercial establishment, to expose his genitals, pubic area, buttocks, anus or anal cleft or cleavage;

  (4) To suffer or permit any person, while on the premises of said commercial establishment, to use any device or covering which is intended to give the appearance of or simulate the genitals, pubic area, buttocks, anus, anal cleft, or cleavage.

(b) It shall be unlawful for any female person, while on the premises of a commercial establishment located within the boundaries of the city, at which alcoholic beverages are served or offered for sale for consumption on the premises, or at which alcoholic beverages are permitted to be consumed, to expose that area of the human female breast at or below the top of the areola thereof, or to use any device or covering which is intended to give the appearance or simulate such areas of the female breast as described herein.

(c) It shall be unlawful for any person, while on the premises of a commercial establishment located within the boundaries of the city, at which alcoholic beverages are served or offered for sale for consumption on the premises, or at which alcoholic beverages are permitted to be consumed, to expose his genitals, pubic area, buttocks, anus, or anal cleft or cleavage, or to use any device or

covering which is intended to give the appearance of or simulate the genitals, pubic area, buttocks, anus or anal cleft or cleavage.

(Code 1993, § 18-26; Ord. No. 97-12, § 1, 7-7-1997)

Sec. 4-60. Injunctive relief.

The city's attorney is and shall be hereby authorized to seek compliance with this article by seeking injunctive relief in a court of proper jurisdiction to compel the operator, owner, or other violator of this article, to comply with the terms and provisions thereof. The ability of the city to seek injunctive relief hereunder shall not be subject to, nor shall it be a prerequisite thereof, that the city has sought compliance with this article by application of penalties and sanctions as otherwise set out in this article.

(Code 1993, § 18-28; Ord. No. 97-12, § 1, 7-7-1997)

Chapter 5 RESERVED

Chapter 6 AMUSEMENTS AND ENTERTAINMENTS

ARTICLE I. - IN GENERAL

ARTICLE II. - SEXUALLY ORIENTED BUSINESSES

ARTICLE III. - COMMERCIAL FILMING

ARTICLE I. IN GENERAL

Sec. 6-1. Bond or liability insurance required for amusement rides.

Secs. 6-2—6-20. Reserved.

Sec. 6-1. Bond or liability insurance required for amusement rides.

No person shall conduct, operate, manage or sponsor any Ferris wheel, merry-go-round or other amusement ride operated for hire or for the purpose of promoting or advertising any such trade or business, without first filing with the city secretary a bond or certificate of liability insurance, in an amount as provided by the State Torts Claim Act indemnifying the public against damages sustained by reason of the operation of such ride. Such bond or certificate of insurance shall be subject to approval by the city attorney. This section shall apply to all persons, whether or not a license is required by any other provision of this Code.

(Code 1978, § 13-1; Code 1993, § 50-1)

State law reference— State Tort Claims Act, V.T.C.A., Civil Practice and Remedies Code ch. 101.

Secs. 6-2—6-20. Reserved.

ARTICLE II. SEXUALLY ORIENTED BUSINESSES [1]

Sec. 6-21. Purpose.

Sec. 6-22. Definitions.

Sec. 6-23. Classification.
Sec. 6-24. License required; duties of applicant; location of business.
Sec. 6-25. Issuance of license.
Sec. 6-26. Fees.
Sec. 6-27. Violations.
Sec. 6-28. Inspection.
Sec. 6-29. Expiration of license.
Sec. 6-30. Suspension.
Sec. 6-31. Revocation.
Sec. 6-32. Appeal.
Sec. 6-33. Transfer of license.
Sec. 6-34. Additional regulations—Adult cabarets.
Sec. 6-35. Same—Adult motels.
Sec. 6-36. Same—Adult tanning salons.
Sec. 6-37. Same—Adult theaters.
Sec. 6-38. Same—Escort agencies.
Sec. 6-39. Same—Nude modeling studios.
Sec. 6-40. Same—Sexual encounter centers.
Sec. 6-41. Regulations pertaining to exhibition of sexually explicit films or videos.
Sec. 6-42. Display of sexually explicit material to minors.
Sec. 6-43. Defenses.
Secs. 6-44—6-74. Reserved.

Sec. 6-21. Purpose.

(a) The purpose of this article is to regulate sexually oriented businesses to promote the health, safety, and general welfare of the citizens of the city, and to establish a system of reasonable and uniform regulation of sexually oriented businesses within the city. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. The prohibition of the promotion of obscene material (not protected by the First Amendment) is enforceable through separate criminal sanctions under the Penal Code.

(b) This article is promulgated pursuant to V.T.C.A., Local Government Code ch. 243.

(Code 1993, § 18-1; Ord. No. 97-11, § 2, 6-16-1997)

Sec. 6-22. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adult arcade means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, or mechanically-controlled, still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

Adult bookstore or *adult video store* means a commercial establishment which as one of its principal business purposes offers for sale or rental, for any form of consideration, any one or more of the following:

(1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videocassettes or video reproductions, slides, or other visual representations, which depict or describe "specified sexual activities" or "specified anatomical areas"; or

(2) Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities."

Adult cabaret means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:

(1) Persons who appear in a state of nudity;

(2) Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or

(3) Films, motion pictures, videocassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

Adult motel means a hotel, motel or similar commercial establishment which:

(1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, film, motion pictures, videocassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; or

(2) Offers a sleeping room for rent for a period of time that is less than ten hours; or

(3) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten hours.

Adult motion picture theater means a commercial establishment where, for any form of consideration, films, motion pictures, videocassettes, slides or similar photographic reproductions are regularly shown and are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

Adult tanning salon means a commercial establishment which provides facilities for tanning the human skin, such as tanning beds, suntan lights, or other similar facilities, and regularly features for the entertainment of its clientele:

(1) Persons who appear in a state of nudity; or

(2) Live performances or style shows of lingerie performed by persons who appear in a state of nudity or which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

Adult theater means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

Applicant means a person who must apply for a license by this article.

Chief of police means the chief of police of the city or the chief's designated agent.

Child care facility means a building used as a day nursery, children's boarding home, child-placing agency or other place for the care or custody of children under 15 years of age licensed by the state pursuant to V.T.C.A., Human Resources Code § 42.041 et seq.

Church or *place of religious worship* means a building in which persons regularly assemble for worship, intended primarily for purposes connected with faith, or for propagating a particular form of belief.

Dwelling means a house, duplex, apartment, townhouse, condominium, mobile home or any other building used for residential purposes.

Escort means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie, or to privately perform a striptease for another person.

Escort agency means a business association which furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes, for a fee, tip, or other consideration.

Establishment means and includes any of the following:

(1) The opening or commencement of any sexually oriented business as a new business;

(2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;

(3) The addition of any sexually oriented business to any other existing sexually oriented business;

(4) The relocation of any sexually oriented business; or

(5) A location and place of business.

Hospital means a building used to provide health services for human inpatient medical care for the sick or injured, licensed pursuant to the Texas Hospital Licensing Law, V.T.C.A., Health and Safety Code ch. 241 or operated by an agency of the federal government, or a convalescent facility licensed pursuant to V.T.C.A., Health and Safety Code ch. 242.

Licensee means a person in whose name a license to operate a sexually oriented business has been issued, as well as, the individual listed as an applicant on the application for a license on a person licensed under this article.

Nude modeling studio means any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration.

Nudity or *a state of nudity.*

(1) The term "nudity" or "a state of nudity" means:

    a. The appearance of a human bare buttock, anus, male genitals, female genitalia, pubic region or female breasts.

    b. A state of dress which fails to opaquely cover a human buttock, anus, male genitals, female genitalia, pubic region or areola of the female breast.

(2) This definition shall not include a mother in the act of nursing her child.

Operates or *causes to be operated* means to cause to function or to put or keep in operation. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

Public building means a building used by federal, state or local government and open to the general public.

Public park means a tract of land maintained by the federal, state or local government for the recreation and enjoyment by the general public.

School means a building where persons regularly assemble for the purpose of instruction or education, together with the playgrounds, dormitories, stadiums and other structure or grounds used in conjunction therewith.

Seminude or *seminudity* means a state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

Sexual encounter center means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration physical contact in the form of wrestling or tumbling between persons of the opposite sex or other activities between male and female persons and/or persons of the same sex, when one or more of the persons is in a state of nudity or seminude.

Sexually oriented business means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult tanning salon, adult theater, escort agency, nude modeling studio, sexual encounter center, or other commercial enterprise, the primary business of which is the offering of a service or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer.

Specified anatomical areas means human genitals in a state of sexual arousal.

Specified sexual activities means and includes any of the following:

(1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;

(2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;

(3) Masturbation, actual or simulated; or

(4) Excretory functions as part of, or in connection with, any of the activities set forth in (1) through (3) of this definition.

Transfer of ownership or control of a sexually oriented business includes any of the following:

(1) The sale, lease, or sublease of the business;

(2) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or

(3) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of the law upon the death of the person possessing the ownership or control.

(Code 1993, § 18-2; Ord. No. 97-11, § 2, 6-16-1997)

Sec. 6-23. Classification.

Sexually oriented businesses are classified as follows:

(1) Adult arcades;

(2) Adult bookstores or adult video stores;

(3) Adult cabarets;

(4) Adult motels;

(5) Adult motion picture theaters;

(6) Adult tanning salons;

(7) Adult theaters;

(8) Escort agencies;

(9) Nude modeling studios; and

(10) Sexual encounter centers.

(Code 1993, § 18-3; Ord. No. 97-11, § 2, 6-16-1997)

Sec. 6-24. License required; duties of applicant; location of business.

(a) The following are required to be licensed:

(1) All owners, clerks, and employees of a sexually oriented business are required to be licensed to operate or work in said business. The term "employees" includes persons who work in a sexually oriented business for gratuities or other compensation and who may or may not earn wages or a salary;

(2) All corporations or directors of corporations of any sexually oriented business and their employees;

(3) All partners in any sexually oriented business and their employees; and

(4) All executive officers, corporations, partners, and lienholders and their employees which are associated with any sexually oriented business requiring a license under this article.

(b) No person shall work for any sexually oriented business without having at all times while at work, a valid current state driver's license or a state-issued identification card which depicts a picture of the person and indicates the person's date of birth.

(c) All potential employees and/or clerks of sexually oriented businesses shall be in compliance with and not in violation of any terms of this article before being issued an identification card to work at the business. Application forms shall be provided by the chief of police and the determination of compliance shall be made by the chief of police within 30 days from time of application.

(d) An application for a sexually oriented business license shall be made on a form provided by the chief of police. The application shall be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram shall be legible, accurate, and drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. Applicants who must comply with section 6-41, "Regulations pertaining to exhibition of sexually explicit films or videos," shall submit a diagram meeting the requirements of section 6-41. All locational requirements shall be approved by the chief of police within 30 days from the time the application is filed.

(e) The applicant for a sexually oriented business license shall be qualified according to the provisions of this article.

(f) If a person who wishes to operate a sexually oriented business is an individual, such person shall sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has an interest in the business shall sign the application for a license as applicant and shall be considered a licensee if a license is granted.

(g) The fact that a person possesses any other valid license required by law does not exempt that person from the requirement of obtaining a sexually oriented business license. A person who operates a sexually oriented business and possesses another business license shall comply with the

requirements and provisions of this article, as well as the requirements and provisions of the laws concerning the other license.

(h) Each applicant shall attach two copies of a recent photo to the application form.

(i) The application shall be accompanied by the following:

(1) Payment of the application fee in full;

(2) If the establishment is a state corporation, a certified copy of the articles of incorporation, together with all amendments;

(3) If the establishment is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments;

(4) If the establishment is a limited partnership formed under the laws of the state, a certified copy of the certificate of limited partnership, together with all amendments; or

(5) If the establishment is a foreign limited partnership, a certified copy of the certificate of limited partnership and the qualification documents, together with all amendments.

(j) Each applicant for a sexually oriented business license shall, upon the filing of the application and payment of the filing fee, place signs (at least 24 inches by 36 inches in size) on the property which provide notification and information specifically stating "Sexually Oriented Business License Application Pending" and the date on which the application was filed. All lettering on the signs must be at least 1½ inches by two inches in size for each letter on the sign. The signs must be of sufficient quantities to be placed upon the property so as to identify it as being subject to a pending application for a sexually oriented business license. It shall be the duty of each applicant as to each particular application to erect said signs along all the property's public road or highway frontage so as to be clearly visible from the public road or highway. If a property does not have a public road or highway frontage, then signs shall be placed upon the property in a manner to maximize the view of said sign when approached from the customary means of approaching the property. One sign shall be erected for each 100-foot increment of each public road or highway frontage on said existing property, or any part thereof. Said signs shall be erected not less than five days after the filing of the application for the sexually oriented business license and remain erected until the application has been approved by the chief of police.

(k) Every applicant for a sexually oriented business license shall give notice of the application by publication at the applicant's expense in two consecutive issues of the official newspaper of the city. The notice shall be printed in ten-point boldface type, shall appear in the general news section of the paper, and shall include the following:

(1) The fact that a sexually oriented business license has been applied for;

(2) The exact location and address of the place of business for which the permit is sought;

(3) The names of each owner of the business and, if the business is operated under an assumed name, the trade name together with the names of all owners; and

(4) If the applicant is a corporation, the names and titles of all officers.

Such notice shall be printed not less than 14 days after the application is filed with the chief of police.

(l) An applicant for a renewal permit on an existing business at the time of the passage of this article is not required to publish notice or meet the posting requirements of subsections (j) and (k) of this section.

(m) The applicant for a sexually oriented business permit shall certify that:

(1) The proposed sexually oriented business will be located a minimum of 3,000 feet from the following:

a. A child care facility;

b. A church or place of religious worship;

c. A dwelling;

d. A hospital;

e. A public building;

f. A public park; and

g. A school.

(2) The proposed sexually oriented business will be located a minimum of 1,500 feet from any other sexually oriented business; and

(3) That no sign or display will be visible from the exterior of the building or structure and no other advertising will be visible from the exterior of the building or structure, which shows, advertises, displays, or indicates that a nude or seminude person is available for viewing or that shows, advertises, displays, or indicates specified anatomical areas or specified sexual activities.

For the purposes of this section, measurements shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the property line of the proposed sexually oriented business to the nearest portion of the property line of the facility described in subsections (m)(1) and (2) of this section.

(Code 1993, § 18-4; Ord. No. 97-11, § 2, 6-16-1997)

Sec. 6-25. Issuance of license.

(a) The chief of police shall approve the issuance of a license to an applicant within 45 days after receipt of a complete application unless the chief of police finds one or more of the following to be true:

(1) An applicant is under 18 years of age;

(2) An applicant or an applicant's spouse is overdue in the payment to the city of taxes, fees, fines, or penalties assessed against or imposed upon the applicant or the applicant's spouse in relation to a sexually oriented business. The city finance director shall make this determination and report the director's findings to the chief of police within 30 days from the time the application is filed;

(3) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;

(4) An applicant or an applicant's spouse has been convicted of a violation of a provision of this article, other than the offense of operating a sexually oriented business without a license, within two years immediately preceding the application. The fact that a conviction is being appealed shall have no effect. The chief of police shall make this determination within 30 days from the time the application is filed.

(5) The premises to be used for the sexually oriented business have not been approved by the chief of police as being in compliance with the locational requirements or any other requirements of this article. Reports of compliance or noncompliance with this article shall be completed by the chief of police within 30 days from the time the application is filed;

(6) The license fee required by this article has not been paid;

(7) An applicant has failed to comply with the requirements of section 6-24(i), (j), or (k), unless exempt under section 6-24(l);

(8) An applicant has been employed in a sexually oriented business in a managerial capacity within the preceding 12 months and has demonstrated an inability to operate or manage a sexually oriented business premises in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers;

(9) An applicant or the proposed establishment is in violation of, or is not in compliance with this article;

(10) An applicant or an applicant's spouse has been convicted of a crime:

a. Involving:

1. Any of the following offenses as described in V.T.C.A., Penal Code ch. 43

(i) Prostitution;

(ii) Promotion of prostitution;

(iii) Aggravated promotion of prostitution;

(iv) Compelling prostitution;

(v) Obscenity;

(vi) Sale, distribution, or display of harmful material to a minor;

(vii) Sexual performance by a child; or

(viii) Possession of child pornography;

2. Any of the following offenses as described in V.T.C.A., Penal Code ch. 21

(i) Public lewdness;

(ii) Indecent exposure; or

(iii) Indecency with a child;

3. Sexual assault or aggravated sexual assault as described in V.T.C.A., Penal Code ch. 22

4. Incest, solicitation of a child, or harboring a runaway child as described in V.T.C.A., Penal Code ch. 25

5. Criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses;

b. For which:

1. Less than two years have elapsed since the date of conviction, or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

2. Less than five years have elapsed since the date of conviction, or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

3. Less than five years have elapsed since the date of the last conviction, or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

(b) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or applicant's spouse.

(c) An applicant who has been convicted or whose spouse has been convicted of an offense listed in subsection (a)(10) of this section may qualify for a sexually oriented business license only when the time period required by subsection (a)(10)b. of this section, has elapsed.

(d) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

(e) It shall be the duty of the chief of police to report to the applicant the findings under this section within 30 days from the time the application is filed.

(f) No license shall be issued if the applicant is in violation of any health or safety statute of the state or any health or safety ordinance of the city.

(g) Any sexually oriented business which is in operation on the effective date of the ordinance from which this article is derived shall have 60 days within which to file an application with the chief of police. During the 30-day period described in subsection (a) of this section, said applicant who was in business on the effective date of the ordinance from which this article is derived shall not otherwise be regulated by this article.

(h) If the chief of police fails to act upon an application within the 30-day period specified in this article, the applicant shall be entitled to the issuance of a temporary license upon written demand thereto to the chief of police by the applicant. Such a temporary license shall be valid only until the third day after the chief of police issues the requested license or denies issuance of same. Denial of a license shall be appealable as set out in section 6-32

(Code 1993, § 18-5; Ord. No. 97-11, § 2, 6-16-1997)

Sec. 6-26. Fees.

(a) The annual fee for a sexually oriented business license shall be as currently established or as hereafter adopted from time to time by resolution of the city council.

(b) Each employee of a sexually oriented business shall pay an annual fee with each application as currently established or as hereafter adopted from time to time by resolution of the city council.

(c) Fees are nonrefundable and no portion of any fee collected under this article shall be returned after a permit application has been filed.

(Code 1993, § 18-6; Ord. No. 97-11, § 2, 6-16-1997)

Sec. 6-27. Violations.

(a) It shall be a violation of this article for any person to own or operate a sexually oriented business at a location inside the corporate limits of the city unless the sexually oriented business possesses and has posted a valid license issued by the chief of police in accordance with the terms of this article.

(b) It shall be a violation of this article for any person to be employed at or work at a sexually oriented business at a location inside the corporate limits of the city unless the person shall possess while on the premises of a sexually oriented business a valid license issued by the chief of police in accordance with the terms of this article. This includes individuals who work for gratuities or other compensation but who may or may not earn wages or a salary.

(c) It shall be a violation of this article for any person to employ, in a sexually oriented business at a location inside the corporate limits of the city a person under the age of 18 years. This includes individuals who work for gratuities or other compensation but who may or may not earn wages or a salary.

(d) It shall be a violation of this article for a person under the age of 18 years to appear in a state of nudity in or on the premises of a sexually oriented business. It is a defense to prosecution under this subsection if the person under 18 years of age was in a restroom not open to public view or persons of the opposite sex.

(e) It shall be a violation of this article for a person to knowingly allow a person under the age of 18 years to appear in a state of nudity in or on the premises of a sexually oriented business. It is a defense to prosecution under this subsection if the person under 18 years of age was in a restroom not open to public view or persons of the opposite sex.

(f) It shall be a violation of this article for a person to appear in a state of nudity in an area of a sexually oriented business which can be viewed from a public right-of-way.

(g) It shall be a violation of this article for an employee of a sexually oriented business who appears in a state of nudity or seminude to fondle or caress any patron or clientele of the sexually oriented business, and it shall be unlawful for any patron or clientele of any sexually oriented business to fondle or caress any employee of a sexually oriented business who appears in a state of nudity or semi-nudity.

(h) It shall be a violation of this article for any person to display or allow any sign, display or advertising to be visible from the exterior of the building or structure of a sexually oriented business which shows, advertises, displays, or indicates that a nude or semi-nude person is available for viewing or that shows, advertises, displays or indicates specified anatomical areas or specified sexual activities.

(Code 1993, § 18-7; Ord. No. 97-11, § 2, 6-16-1997)

Sec. 6-28. Inspection.

(a) An applicant or licensee shall permit representatives of the city police department to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law at any time it is occupied or open for business.

(b) A person who operates a sexually oriented business or his agent or employee commits an offense if he refuses to permit a lawful inspection of the premises by a representative of the city police department at any time it is occupied for business or open for business.

(c) The provisions of this section shall not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitat.

(Code 1993, § 18-8; Ord. No. 97-11, § 2, 6-16-1997)

Sec. 6-29. Expiration of license.

Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in section 6-24.

(Code 1993, § 18-9; Ord. No. 97-11, § 2, 6-16-1997)

Sec. 6-30. Suspension.

The chief of police shall suspend a license for a period not to exceed 30 days if the chief of police determines that a licensee has:

(1) Violated or is not in compliance with any portion of this article;

(2) Engaged in excessive use of alcoholic beverages while on the sexually oriented business premises;

(3) Refused to allow an inspection of the sexually oriented business premises as authorized by this article;

(4) Knowingly permitted gambling by any person on the sexually oriented business premises; or

(5) Demonstrated inability to operate or manage a sexually oriented business in a peaceful and law abiding manner, thus necessitating action by law enforcement officers.

(Code 1993, § 18-10; Ord. No. 97-11, § 2, 6-16-1997)

Sec. 6-31. Revocation.

(a) The chief of police shall revoke a license if a cause of suspension in section 6-30 occurs and the license has been suspended within the preceding 12 months.

(b) The chief of police shall revoke a license if the chief of police determines that:

(1) A licensee gave false or misleading information in the material submitted to the chief of police during the application process;

(2) A licensee or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;

(3) A licensee or an employee has knowingly allowed prostitution on the premises;

(4) A licensee or an employee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;

(5) A licensee has been convicted of an offense listed in section 6-25(a)(10)a. for which the time period required in section 6-25(a)(10)b. has not elapsed;

(6) On two or more occasions, within a 12-month period, a person or persons committed an offense occurring in or on the licensed premises of a crime listed in section 6-25(a)(10)a. for which a conviction has been obtained, and the person or persons were employees of the sexually oriented business at the time the offenses were committed;

(7) A licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in or on the licensed premises. The term "sexual contact" shall have the same meaning as it is defined in V.T.C.A., Penal Code § 21.01;

(8) A licensee is delinquent in payment to the city for hotel occupancy taxes, and valorem taxes, or sales taxes related to the sexually oriented business; or

(9) A licensee has violated a health and/or safety statute or ordinance as listed in section 6-25(f).

(c) The fact that a conviction is being appealed shall have no effect on the revocation of the license.

(d) Subsection (b)(7) of this section shall not apply to adult motels as a grounds for revoking the license unless the licensee or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place or within public view.

(e) When the chief of police revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license for one year from the date revocation became effective. If, subsequent to revocation, the chief of police finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became effective. If the license was revoked under subsection (b)(5) of this section, an applicant may not be granted another license until the appropriate number of years required under section 6-25(a)(10)b., has elapsed.

(Code 1993, § 18-11; Ord. No. 97-11, § 2, 6-16-1997)

Sec. 6-32. Appeal.

(a) If the chief of police denies the issuance of a license, or the chief of police suspends or revokes a license, the chief of police shall send to the applicant, or licensee, by certified mail, return receipt requested, written notice of the action, a statement of facts with supporting documentation which formed the basis for the decision, and notice of the right to an appeal.

(b) The aggrieved party may appeal a decision of the chief of police to the city council. An appeal to the city council must be filed with the city secretary within 15 days of receipt of notice of the decision of the chief of police. Filing an appeal to city council stays the chief of police in suspending or revoking a license until the city council makes a final decision. The city council shall, within 15 days after

receiving a notice of appeal, grant a hearing of the appeal and shall, within a period of five days, sustain, reverse, or modify the decision of the chief of police. If no appeal is taken from the findings made by the chief of police within the time provided herein, the decision of the chief of police is final. The aggrieved party may appeal the decision of city council to a state district court of appropriate jurisdiction. An appeal to the state district court shall be filed within 30 days after the receipt of notice of the decision of the city council. All decisions of the city council not appealed become final and unappealable within 30 days. The applicant or licensee shall bear the burden of proof before the city council and in district court.

(Code 1993, § 18-12; Ord. No. 97-11, § 2, 6-16-1997)

Sec. 6-33. Transfer of license.

A licensee shall not transfer the license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

(Code 1993, § 18-13; Ord. No. 97-11, § 2, 6-16-1997)

Sec. 6-34. Additional regulations—Adult cabarets.

(a) Any dance, performance, exhibition or show by an employee in a state of nudity or seminudity shall occur on a platform which is raised at least two feet from the level of the floor.

(b) No dance, performance, exhibition or show by an employee in a state of nudity or seminudity shall occur closer than ten feet to any patron or clientele.

(c) No patron or clientele shall directly pay or give any gratuity to any person, employee or otherwise, who shall dance or participate in any show, exhibition or performance while in a state of nudity or seminudity.

(d) No person, employee or otherwise, shall solicit or accept any gratuity from any patron or clientele in return for dancing or participating in any show, exhibition or performance while in a state of nudity or seminudity.

(e) A minimum of two signs at least 18 inches square bearing red letters a minimum of two inches high on a white background shall be prominently displayed in locations readily observed by patrons or clientele providing the following notice:

"Gratuities for Performers are Prohibited by Law.

(Sec. 6-34, City of Tomball Code of Ordinances)"

(Code 1993, § 18-14)

Sec. 6-35. Same—Adult motels.

(a) Evidence that a sleeping room in a hotel, motel or similar commercial establishment has been rented and vacated two or more times in a period of time that is less than ten hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this article.

(b) A person commits an offense if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented business license, he rents or sub-rents a sleeping room to a person and within ten hours from the time the room is rented, he rents or sub-rents the same sleeping room again.

(c) For purposes of subsection (b) of this section, the terms "rent" and "sub-rent" mean the act of permitting a room to be occupied for any form of consideration.

(Code 1993, § 18-15; Ord. No. 97-11, § 2, 6-16-1997)

Sec. 6-36. Same—Adult tanning salons.

(a) Any dance, performance, exhibition or show by an employee in a state of nudity or seminudity shall occur on a platform which is raised at least two feet from the level of the floor.

(b) No dance, performance, exhibition or show by an employee in a state of nudity or seminudity shall occur closer than ten feet to any patron or clientele.

(c) No patron or clientele shall directly pay or give any gratuity to any person, employee or otherwise, who shall dance or participate in any show, exhibition or performance while in a state of nudity or seminudity.

(d) No person, employee or otherwise, shall solicit or accept any gratuity from any patron or clientele in return for dancing or participating in any show, exhibition or performance while in a state of nudity or seminudity.

(e) A minimum of two signs at least 18 inches square bearing red letters a minimum of two inches high on a white background shall be prominently displayed in locations readily observed by patrons or clientele providing the following notice:

"Gratuities for Performers Prohibited by Law.

(Sec. 6-36, City of Tomball Code of Ordinances)"

(Code 1993, § 18-16; Ord. No. 97-11, § 2, 6-16-1997)

Sec. 6-37. Same—Adult theaters.

(a) Any dance, performance, exhibition or show by an employee in a state of nudity or seminudity shall occur on a platform which is raised at least two feet from the level of the floor.

(b) No dance, performance, exhibition or show by an employee in a state of nudity or seminudity shall occur closer than ten feet to any patron or clientele.

(c) No patron or clientele shall directly pay or give any gratuity to any person, employee or otherwise, who shall dance or participate in any show, exhibition or performance while in a state of nudity or seminudity.

(d) No person, employee or otherwise, shall solicit or accept any gratuity from any patron or clientele in return for dancing or participating in any show, exhibition or performance while in a state of nudity or seminudity.

(e) A minimum of two signs at least 18 inches square bearing red letters a minimum of two inches high on a white background shall be prominently displayed in locations readily observed by patrons or clientele providing the following notice:

"Gratuities for Performers Prohibited by Law.

(Sec. 6-37, City of Tomball Code of Ordinances)"

(Code 1993, § 18-17; Ord. No. 97-11, § 2, 6-16-1997)

Sec. 6-38. Same—Escort agencies.

A person commits an offense if he acts as an escort or agrees to act as an escort for any person under 18 years of age.

(Code 1993, § 18-18; Ord. No. 97-11, § 2, 6-16-1997)

Sec. 6-39. Same—Nude modeling studios.

(a) A nude modeling studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room opens to the public.

(b) Any dance, performance, exhibition or show by an employee in a state of nudity or seminudity shall occur on a platform which is raised at least two feet from the level of the floor.

(c) No dance, performance, exhibition or show by an employee in a state of nudity or seminudity shall occur closer than ten feet to any patron or clientele.

(d) No patron or clientele shall directly pay or give any gratuity to any person, employee or otherwise, who shall dance or participate in any show, exhibition or performance while in a state of nudity or seminudity.

(e) No person, employee or otherwise, shall solicit or accept any gratuity from any patron or clientele in return for dancing or participating in any show, exhibition or performance while in a state of nudity or seminudity.

(f) A minimum of two signs at least 18 inches square bearing red letters a minimum of two inches high on a white background shall be prominently displayed in locations readily observed by patrons or clientele providing the following notice:

"Gratuities for Performers are Prohibited by Law.

(Sec. 6-39, City of Tomball Code of Ordinances)"

(Code 1993, § 18-19; Ord. No. 97-11, § 2, 6-16-1997)

Sec. 6-40. Same—Sexual encounter centers.

(a) Any dance, performance, exhibition or show by an employee in a state of nudity or seminudity shall occur on a platform which is raised at least two feet from the level of the floor.

(b) No dance, performance, exhibition or show by an employee in a state of nudity or seminudity shall occur closer than ten feet to any patron or clientele.

(c) No patron or clientele shall directly pay or give any gratuity to any person, employee or otherwise, who shall dance or participate in any show, exhibition or performance while in a state of nudity or seminudity.

(d) No person, employee or otherwise, shall solicit or accept any gratuity from any patron or clientele in return for dancing or participating in any show, exhibition or performance while in a state of nudity or seminudity.

(e) A minimum of two signs at least 18 inches square bearing red letters a minimum of two inches high on a white background shall be prominently displayed in locations readily observed by patrons or clientele providing the following notice:

"Gratuities for Performers are Prohibited by Law.

(Sec. 6-40, City of Tomball Code of Ordinances)"

(Code 1993, § 18-20; Ord. No. 97-11, § 2, 6-16-1997)

Sec. 6-41. Regulations pertaining to exhibition of sexually explicit films or videos.

(a) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than 150 square feet of floor space,

a film, video cassette, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(1) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which persons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The chief of police may waive the foregoing diagram for renewal applications, if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(2) The application shall be sworn to be true and correct by the applicant.

(3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the chief of police or a designee of the chief of police.

(4) It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

(5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station. Viewing booths must be separated at least 12 inches from the exterior walls of any other view booths by open space.

(6) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present on the premises, to ensure that the area specified in subsection (a)(5) of this section remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times that any patron is present in the premises, and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (a)(1) of this section.

(7) For safety purposes, the premises shall be equipped with over-head lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one foot-candle as measured at the floor level.

(8) It shall be the duty of the owners and operator and it shall also be the duty of any agents and employees present on the premises to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(b) A person having a duty under subsections (a)(1) through (8) of this section, commits an offense if he knowingly fails to fulfill that duty.

(c) All locational requirements of this section shall be approved by the chief of police within 30 days from the time the application is filed if in compliance herewith.

(Code 1993, § 18-21; Ord. No. 97-11, § 2, 6-16-1997)

Sec. 6-42. Display of sexually explicit material to minors.

(a) A person commits an offense if, in a sexually oriented business establishment open to persons under the age of 17 years, he displays a book, pamphlet, newspaper, magazine, film, or videocassette, the cover of which depicts, in a manner calculated to arouse sexual lust or passion for commercial gain, any of the following:

(1) Human sexual intercourse, masturbation, or sodomy;

(2) Fondling or other erotic touching of human genitals, pubic region, buttocks, or female breasts;

(3) Less than completely and opaquely covered human genitals, buttocks, or that portion of the female breast below the top of the areola;

(4) Human male genitals in a discernibly turgid state, whether covered or uncovered.

(b) In this section, the term "display" means to locate an item in such a manner that, without obtaining assistance from an employee of the business establishment:

(1) It is available to the general public for handling and inspection; or

(2) The cover or outside packaging on the item is visible to members of the general public.

(Code 1993, § 18-22; Ord. No. 97-11, § 2, 6-16-1997)

Sec. 6-43. Defenses.

(a) It shall be a defense to prosecution under section 6-37(a) or 6-39(a), (b), or (c), that a person appearing in a state of nudity or seminudity did so in a modeling class.

(b) The city may sue in district court for an injunction to prohibit the violation of any term or provision of this article.

(Code 1993, § 18-23; Ord. No. 97-11, § 2, 6-16-1997)

Secs. 6-44—6-74. Reserved.

FOOTNOTE(S):

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State Law reference— Authority of municipality to regulate sexually oriented businesses, V.T.C.A., Local Government Code ch. 243. (Back)

ARTICLE III. COMMERCIAL FILMING

Sec. 6-75. Purpose.

Sec. 6-76. City control and authority.

Sec. 6-77. Use of city personnel.

Sec. 6-78. Use of city property.

Sec. 6-79. Special equipment and vehicles.

Sec. 6-80. Hours of filming.

Sec. 6-81. Notification of neighbors.

Sec. 6-82. Certificate of insurance.

Sec. 6-83. Hold harmless agreement.

Sec. 6-84. Liability.

Sec. 6-85. Permit.

Sec. 6-86. Application.

Sec. 6-87. Application approval requirements.

Sec. 6-88. Refund of application fees; transferability; expiration.

Sec. 6-89. Vested rights not created by issuance.

Sec. 6-75. Purpose.

(a) This article is intended to protect the personal and property rights of the city's residents and businesses. The city manager may impose additional regulations in the interest of public safety if deemed necessary.

(b) These guidelines cover requests for commercial use of city-owned property, city-owned equipment, city employees and private property in the filming of movies, television and cable shows, commercials, and related activities. The approved use of said property, equipment, and employees may affect adjacent public or private property.

(c) The term "commercial filming project" means the filming of a movie, TV show, commercial or related activity that occurs on city-owned property, city right-of-way, city park, city street or other city controlled area, or occurs on private property if the activity will affect such city controlled areas, or use city employees, city-owned equipment, or city-owned property.

(Ord. No. 2010-26, § 2(15.1), 2-21-2011)

Sec. 6-76. City control and authority.

(a) The city manager may authorize the use of any street, right-of-way, or public building, city-owned equipment, or city employees for commercial uses in the filming or taping of movies, television programs, commercials, training films and related activities.

(b) The city shall have full control over the use of public streets and buildings of the city while being used as well as control over the hours of production and the general location of the production. The city reserves the full and absolute right to prohibit all filming or to order cessation of filming if determined to be detrimental to the public health, safety or welfare.

(c) The city may inspect all structures, devices, and equipment to be used in connection with the filming and taping if required by the city manager.

(Ord. No. 2010-26, § 2(15.2), 2-21-2011)

Sec. 6-77. Use of city personnel.

(a) The applicant shall pay for the costs of any police, fire, public works, or other city personnel assigned to the project (whether specifically requested by the applicant or not).

(b) The city manager has the authority to require additional police or fire coverage if it is determined to be in the best interest for public safety. Off-duty police officers or firefighters are to be paid 1½ their hourly rate.

(c) The city manager will provide the applicant an estimate of the additional city personnel, other than the personnel requested by the applicant, necessary for the safe completion of the project.

(Ord. No. 2010-26, § 2(15.3), 2-21-2011)

Sec. 6-78. Use of city property.

(a) In conjunction with the use of any street, right-of-way, public building, name, trademark, logo, or equipment of the city, the city manager may require that all or part of the fee specified or determined for such use be paid in advance. A security or damage deposit may also be required at the city manager's discretion.

(b) The city manager shall establish a fee schedule for the use of city property and city equipment. The city manager may, with respect to a specific request for use of property or city equipment, establish rates that are adequate to compensate the city for the use of that property or equipment if the standard rate schedule is inapplicable or inappropriate for the specific use proposed.

(c) The city shall have full control over the use of the name, trademark and logo, public streets, and buildings of the city while being used, as well as control over the hours of production and the general location of the production.

(Ord. No. 2010-26, § 2(15.4), 2-21-2011)

Sec. 6-79. Special equipment and vehicles.

The applicant shall provide a report listing the number of vehicles and types of equipment to be used during the filming including their proposed hours of use and their proposed parking locations. Such locations shall be specifically approved by the city so as to maintain traffic safety. On-street parking, use of public parking lots, use of exterior lighting, power generators, or any other noise or light producing equipment is subject to the city manager's approval.

(Ord. No. 2010-26, § 2(15.5), 2-21-2011)

Sec. 6-80. Hours of filming.

Unless special permission has been obtained from the city manager in advance, filming will be limited to the hours of 7:00 a.m. to 9:00 p.m. on weekdays, 8:00 a.m. to 8:00 p.m. on Saturdays and holidays, and 12:00 noon to 7:00 p.m. on Sundays.

(Ord. No. 2010-26, § 2(15.6), 2-21-2011)

Sec. 6-81. Notification of neighbors.

The applicant shall provide a short written description, approved by the city manager, of the schedule for the proposed production to the owners and residents of each property in the affected neighborhood. The description shall provide a telephone number through which the residents of the affected neighborhood may communicate to the applicant. The applicant shall make reasonable attempts to accommodate the concerns of the residents of the affected neighborhood, and shall report to the city manager a summary of all such communications, along with the name, address, and phone numbers of all contacted residents.

(Ord. No. 2010-26, § 2(15.7), 2-21-2011)

Sec. 6-82. Certificate of insurance.

(a) *Certificate.* The producer shall provide a certificate of insurance, naming the city as an additional insured, showing coverage in at least the amounts as currently established or as hereafter adopted by resolution of the city council from time to time.

(b) *Additional insurance requirement.* If a commercial filming production schedule involves activities that are considered exceptionally dangerous, including but not limited to stunts, pyrotechnics, special effects, aerial photography, amplified sound, or the use of animals, the producer shall provide a certificate of insurance showing an additional umbrella coverage as currently established or as hereafter adopted by resolution of the city council from time to time.

(c) *Exceptions to insurance requirements.* If a commercial filming project meets all of the minimum criteria established in subsections (c)(1) thru (7) of this section, then the producer or business owner shall not be required to provide a certificate of insurance. However, the producer or business owner will still be required to adhere to all the applicable regulations set forth in this chapter. In order to be excepted from the insurance requirements of this section, the following minimum criteria shall be met:

(1) The filming will not utilize any street, right-of-way, public building, city-owned equipment, city employees, or name, trademark, logo of the city, for use in the filming or taping, or other activities;

(2) The city will not require inspections of any structures, devices, or equipment to be used in connection with the filming and taping;

(3) The city will not incur any costs for police, fire, public works, or other city personnel assigned to the project (whether specifically requested by the applicant or not);

(4) The city will not require a security or damage deposit as determined by the city manager's discretion;

(5) The filming will not require the city manager to approve any on-street parking, use of public parking lots, use of exterior lighting, power generators, or any other noise or light producing equipment;

(6) The filming will not take place outside the hours of 7:00 a.m. to 9:00 p.m. on weekdays, 8:00 a.m. to 8:00 p.m. on Saturdays and holidays, and 12:00 noon to 7:00 p.m. on Sundays; and

(7) The filming will not have a distinguishable affect on any residential neighborhood or other residential property.

(Ord. No. 2010-26, § 2(15.8), 2-21-2011)

Sec. 6-83. Hold harmless agreement.

The applicant shall sign the following hold harmless agreement holding the city harmless from any claim that may arise from their use of designated public property, right-of-way, or equipment in conjunction with the permitted use:

"I certify that I represent the firm which will be performing the filming/taping at the locations specified on the attached permit application. I further certify that I and my firm will perform in accordance with the direction and specifications of the city and that I and my firm will defend, indemnify and hold harmless the city for and from any loss, damage, expense, claims and costs of every nature and kind arising out of or in connection with the filming/taping to this permit."

(Ord. No. 2010-26, § 2(15.9), 2-21-2011)

Sec. 6-84. Liability.

The applicant agrees to pay in full, promptly upon receipt of an invoice, the costs of repair for any and all damage to public or private property, resulting from or in connection with, the production, and restore the property to its condition prior to production.

(Ord. No. 2010-26, § 2(15.10), 2-21-2011)

Sec. 6-85. Permit.

It shall be unlawful for any person to undertake a commercial filming project unless a valid permit has been issued by the city. Commercial filming projects underway before the effective date of the ordinance from which this article is derived must be permitted within 90 days of the effective date of the ordinance from which this article is derived.

(Ord. No. 2010-26, § 2(15.11), 2-21-2011)

Sec. 6-86. Application.

(a) Before filing an application for filming, the applicant is encouraged to contact the city manager to discuss the production's specific filming requirements and the feasibility of filming.

(b) Application for a commercial filming permit shall be made with the city secretary by the commercial producer. The application shall be made on a form designed by the city, and shall include the following information:

(1) The title of the commercial, film, or photo shoot;

(2) The type of production to be undertaken;

(3) The location of the filming;

(4) The dates of the filming;

(5) Contact information for the production office, producer and location manager;

(6) Production schedule and activities to include stunts, pyrotechnics, special effects aerial photography, amplified sound or use of animals:

a. Any pyrotechnics will require a special permit and prior approval and authorization from the fire marshal;

b. Fire suppression (i.e., fire extinguishers) or other suitable means of extinguishment may be required; and

c. All open flames, including those used during construction, shall be monitored for re-ignition for no less than ten minutes;

(7) Number of persons involved with the production, including cast and crew;

(8) Anticipated need of city personnel, equipment or property;

(9) Description of any areas in which public access will be restricted during production;

(10) Description of any alterations that will be made to the property:

a. Any and all building or structures constructed, renovated, or used for filming are subject to inspection prior to use;

b. Construction of sets may require building permits;

c. Any wiring or lighting other than temporary cords may require electrical permits pulled by state licensed master electricians;

d. Any plumbing or air conditioning work not portable in nature may require permits pulled by state licensed contractors; and

e. Toilet facilities (portable toilets) must be provided for workers and maintained in a sanitary condition;

(11) Number and type of production vehicles that will be used and the locations where they will be stored;

(12) Location where the crew will be fed, if not at the production location;

(13) Location where extras will be held, if not at the production location; and

(14) Food vending will require health permits from the county health department.

(c) The application form shall include an acknowledgement by the applicant of the restrictions provided, and an affirmation that the operations to be conducted will comply.

(d) An application processing fee as currently established or as hereafter adopted by resolution of the city council from time to time shall accompany each application for filming. The city manager may waive this fee for nonprofit organizations.

(e) The city manager may request additional information if useful or necessary to assist in making the necessary determinations.

(Ord. No. 2010-26, § 2(15.12), 2-21-2011)

Sec. 6-87. Application approval requirements.

(a) The application must be approved before the commencement of filming or any other substantial activity related to the project.

(1) For commercial or episodic television, the application should be approved at least seven business days in advance;

(2) For feature films, the application should be filed ten business days in advance.

(b) The city manager may grant exceptions to this requirement for good cause.

(Ord. No. 2010-26, § 2(15.13), 2-21-2011)

Sec. 6-88. Refund of application fees; transferability; expiration.

(a) The applicant shall not be entitled to a refund of any fees paid in accordance with this article for any cause whatsoever.

(b) A license issued pursuant to this division shall be deemed personal to the licensee and shall not be assignable. However, the license may be transferred from one location or place of business to another location after the city manager shall have been given five days' notice of such proposed transfer, and the city has given consent thereto.

(c) The license shall expire 45 days after the last date of scheduled filming on the application, unless an express expiration date is required by the city manager.

(Ord. No. 2010-26, § 2(15.14), 2-21-2011)

Sec. 6-89. Vested rights not created by issuance.

No license granted under this article shall be deemed the granting of a vested right, but such license shall remain subject to such legislation as shall be promulgated by the city council by ordinance.

(Ord. No. 2010-26, § 2(15.15), 2-21-2011)

Chapter 7 RESERVED

Chapter 8 ANIMALS [1]

ARTICLE I. - IN GENERAL

ARTICLE II. - DOGS AND CATS

ARTICLE III. - LIVESTOCK

ARTICLE IV. - FOWL

ARTICLE V. - IMPOUNDMENT OF LIVESTOCK AND FOWL

ARTICLE VI. - KENNELS

FOOTNOTE(S):

--- (**1**) ---

State Law reference— Livestock, V.T.C.A., Agriculture Code ch. 141 et seq.; health and safety of animals, V.T.C.A., Health and Safety Code ch. 821 et seq. (Back)

ARTICLE I. IN GENERAL

Sec. 8-1. Health officer to enforce sanitary provisions.

Sec. 8-2. Unnecessary noises.

Secs. 8-3—8-22. Reserved.

Sec. 8-1. Health officer to enforce sanitary provisions.

It shall be the duty of the health officer to enforce all health and sanitary measures contained in this chapter.

(Code 1978, § 4-1; Code 1993, § 10-1)

Sec. 8-2. Unnecessary noises.

It shall be unlawful for any person to attach or permit to be attached to any animal belonging to him, or in his possession, any cow bell or loud sounding, noisy or disturbing implement or instrument within the city.

(Code 1978, § 4-2; Code 1993, § 10-2)

Secs. 8-3—8-22. Reserved.

ARTICLE II. DOGS AND CATS [2]

DIVISION 1. - GENERALLY

DIVISION 2. - RESTRAINT AND IMPOUNDMENT

DIVISION 3. - VACCINATIONS

FOOTNOTE(S):

--- (**2**) ---

State Law reference— Registration and restraint ordinances, V.T.C.A., Health and Safety Code § 826.031 et seq. (Back)

DIVISION 1. GENERALLY

Sec. 8-23. Definitions.

Sec. 8-24. Construction.

Sec. 8-25. Effect of conflict with other ordinances.

Sec. 8-26. Local health authority.

Secs. 8-27—8-55. Reserved.

Sec. 8-23. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Animal, cat, dog, person, quarantine, rabies, licensed veterinarian, humanely destroy, vaccinated, currently vaccinated, observation period, quarantine period and *unowned animal* have the same meaning as provided by the state rabies control law, V.T.C.A., Health and Safety Code §§ 826.001—826.055, and the rules of the state department of health promulgated pursuant to such law.

Animal control officer means the person employed by the county health officer or the city to enforce these rules.

Bite means any abrasion, scratch, puncture, tear or piercing of the skin actually or suspected of being caused by an animal.

Certificate means a certificate bearing the signature and license number of a licensed veterinarian, rabies tag number, the name, color, sex, species, age and breed of a dog or cat, the name and address of the owner, the date of the vaccination, and producer, date, serial number and the type of vaccine administered.

County health officer means the duly appointed county health officer of the county, or any person or agent employed by the county health officer or city to enforce these rules.

Exposed to rabies means any dog or cat or other animal, whether it has been registered or vaccinated for rabies or not, which has been bitten, fighting with, or has consorted with an animal known or suspected to have rabies or showing objective symptoms of rabies.

Impound means the apprehending, catching, trapping, netting, tranquilizing, confining or, if necessary, the destruction of any animal by the animal control officer.

Impounding facility means any premises designated by the county for the purpose of impounding or caring for all animals found in violation of this article.

Owner means any individual, corporation, association or any other legal entity that harbors, shelters, keeps, controls, manages, possesses or has part interest in any dog or cat. The occupant/head of household of any premises on which a dog or cat remains for a period of seven days or to which it customarily returns daily for a period of ten days is presumed to be harboring, sheltering or keeping the aforementioned dog or cat, within this definition. Under no circumstances are the normal and ordinarily accepted definitions of the terms "harboring," "sheltering" or "keeping," to be limited to the words of such presumption. If a minor owns a dog or cat or other animal subject to the provisions of this article, the head of the household of which such minor owner is a member shall be deemed to be the owner of such dog or cat or animal for the purpose of this article and under this article shall be responsible as the owner, whether or not such household head is himself a minor. If not a member of a household, such minor owner shall himself be directly subject to the provisions of this article.

Restraint means the control of a dog or cat under the following circumstances:

(1) When it is controlled by a line or leash not more than six feet in length, which line or leash is held by a human being who is capable of controlling or governing the dog or cat in question. See the definition of "owner," concerning minors.

(2) When it is enclosed within a vehicle.

(3) When it is on the premises of the owner and/or keeper, provided that such animal does not have access to a sidewalk or street.

(4) When it is on the property of the owner and under the control of a person over 18 years of age, who is also on the property of the owner, and such animal has not engaged in any conduct which would require it to be impounded under this article.

Stray means any animal running free without restraint which is not on the property of the owner, and not under the control of a person 18 years of age or older.

Vicious animal means any animal that presents a physical threat to humans or other domestic animals.

(Code 1978, § 4-16; Code 1993, § 10-26)

Sec. 8-24. Construction.

The rules set out in this article are adopted pursuant to the authority of the state rabies control law, V.T.C.A., Health and Safety Code ch. 826, and are cumulative with and not in lieu of such law. Upon conflict between this article and such law, the law shall control.

(Code 1978, § 4-39; Code 1993, § 10-27)

Sec. 8-25. Effect of conflict with other ordinances.

This article is not intended to repeal, abrogate or impair any existing animal control ordinances except for those specifically set out in this article. However, where this article and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Code 1978, § 4-40; Code 1993, § 10-28)

Sec. 8-26. Local health authority.

(a) The county health officer or the city is hereby designated as the local health authority for the purposes of these rules.

(b) The local health authority shall have the duty to enforce:

(1) The state rabies control law, V.T.C.A., Health and Safety Code ch. 826;

(2) The rules of the state board of health which comprise the minimum standards for rabies control;

(3) The city rules to control rabies adopted in this article; and

(4) The rules adopted by the state board of health under the area quarantine provisions of the rabies control law, V.T.C.A., Health and Safety Code ch. 826.

(Code 1978, § 4-17; Code 1993, § 10-29)

Secs. 8-27—8-55. Reserved.

DIVISION 2. RESTRAINT AND IMPOUNDMENT

Sec. 8-56. Restraint required.

Sec. 8-57. Vicious animals.

Sec. 8-58. Owner responsible.

Sec. 8-59. Impoundment.

Sec. 8-60. Public pound.

Sec. 8-61. Entry upon lands for enforcement.

Sec. 8-62. Delivery of animals for impoundment.

Sec. 8-63. Strays declared public nuisance.

Sec. 8-64. Strays may be taken up by property owner.

Sec. 8-65. Citations.

Sec. 8-66. Reports of impounded animals.

Sec. 8-67. Holding period for impounded animals.

Sec. 8-68. Selling of impounded dogs and cats.

Sec. 8-69. Destruction of impounded dogs and cats.

Sec. 8-70. Special fund created; purpose.

Sec. 8-71. Interference with officer.

Secs. 8-72—8-102. Reserved.

Sec. 8-56. Restraint required.

All dogs and cats shall be kept under restraint.

(Code 1978, § 4-18; Code 1993, § 10-41)

Sec. 8-57. Vicious animals.

Every vicious dog or cat, as determined by the county or city health officer or the city humane officer, shall be confined by its owner within a building or secure enclosure and shall be securely muzzled or caged whenever off the premises of its owner.

(Code 1978, § 4-19; Code 1993, § 10-42)

Sec. 8-58. Owner responsible.

The owner of every dog or cat shall be held responsible for any behavior of a dog or cat under the provisions of these rules.

(Code 1978, § 4-20; Code 1993, § 10-43)

Sec. 8-59. Impoundment.

It shall be the duty of the county health officer or the city humane officer and other persons designated by such officer, to catch, confine and impound the following:

(1) All stray dogs and cats, whether vaccination tag is displayed or not.

(2) Animals, domesticated, wild or stray, which have bitten or scratched a person or have bitten an animal or have been bitten by a dog or cat or animal suspected of having rabies or have been exposed to rabies.

(Code 1978, § 4-21; Code 1993, § 10-44)

Sec. 8-60. Public pound.

All animals picked up under this division shall be impounded in a public pound.

(Code 1978, § 4-22; Code 1993, § 10-45)

Sec. 8-61. Entry upon lands for enforcement.

The county health officer, the city humane officer, or his authorized deputies are hereby authorized to enter upon any unfenced lot, tract or parcel of land for the purpose of seizing any dog or cat straying thereon. Nothing in this section shall be construed as authority to enter buildings without the permission of the occupant or owner thereof or a valid court order so authorizing.

(Code 1978, § 4-23; Code 1993, § 10-46)

Sec. 8-62. Delivery of animals for impoundment.

Any person may take up and deliver to the animal control officer any animal which the animal control officer is, by the provisions of this article, required to impound.

(Code 1978, § 4-24; Code 1993, § 10-47)

Sec. 8-63. Strays declared public nuisance.

Each stray dog or cat is declared a public nuisance.

(Code 1978, § 4-25; Code 1993, § 10-48)

Sec. 8-64. Strays may be taken up by property owner.

Any dog or cat found straying upon public or private property may be taken up by the owner of such property or his agent and delivered to the animal control officer.

(Code 1978, § 4-26; Code 1993, § 10-49)

Sec. 8-65. Citations.

When dogs or cats are straying and their ownership is known to the animal control officer or his deputy, such animals need not be impounded, but the officer may, in his discretion, cite the owners of such animals to appear in a justice of the peace court or the municipal court of the city to answer charges of violation of this article.

(Code 1978, § 4-27; Code 1993, § 10-50)

Sec. 8-66. Reports of impounded animals.

The county health officer or the city humane officer, or his deputies, upon receiving any dog or cat, shall make a complete registry, entering therein the breed, color and sex of such animal, and the place and time of taking it into custody. If the animal is tagged, he shall enter the name and address of the owner and the number of the vaccination and/or registration tag.

(Code 1978, § 4-28; Code 1993, § 10-51)

Sec. 8-67. Holding period for impounded animals.

It shall be the duty of the county health officer or the city humane officer to keep all healthy unclaimed dogs and cats for a period of three days. If, at the expiration of such period of time such dog or cat has not been claimed or redeemed by the owner, the dog or cat shall be destroyed or disposed of as herein provided.

(Code 1978, § 4-30; Code 1993, § 10-53)

Sec. 8-68. Selling of impounded dogs and cats.

The county health officer or the city humane officer shall be authorized to sell any animals impounded under the terms of this division and not redeemed within three days for the best price that can be obtained, provided that the original owners entitled to the possession of any animal sold pursuant to this section shall be entitled to redeem such animal upon paying the purchaser double the amount paid by him for the animal plus an amount equal to $3.00 for each calendar day or fraction thereof for the care and feeding of such dog or cat and all veterinary expenses incurred by the purchaser. Any dog or cat not so redeemed within 30 days from the date of sale shall become the absolute property of the purchaser.

(Code 1978, § 4-31; Code 1993, § 10-54)

Sec. 8-69. Destruction of impounded dogs and cats.

It shall be the duty of the county health officer to cause all animals impounded under these rules not redeemed or sold as provided in this division to be humanely destroyed as required by the state department of health.

(Code 1978, § 4-32; Code 1993, § 10-55)

Sec. 8-70. Special fund created; purpose.

All moneys collected by the county health officer under the terms of these rules shall be placed in a special fund under the control of the commissioner's court and be used only for defraying the expenses of administration and enforcement of is chapter.

(Code 1978, § 4-33; Code 1993, § 10-56)

Sec. 8-71. Interference with officer.

No person shall interfere with, hinder, or molest any animal control officer or other party designated by the county health officer or the city humane officer, in the performance of any duty delegated under this division, or seek to release any animal taken and held in custody under the provisions of this division except as provided in this article.

(Code 1978, § 4-34; Code 1993, § 10-57)

Secs. 8-72—8-102. Reserved.

DIVISION 3. VACCINATIONS

Sec. 8-103. Required.

Sec. 8-104. Rabies control and quarantine.

Secs. 8-105—8-121. Reserved.

Sec. 8-103. Required.

The owner of every dog or cat shall have the dog or cat vaccinated against rabies as required by the state rabies control law, V.T.C.A., Health and Safety Code ch. 826, and the rules of the state board of health and amendments thereto.

(Code 1978, § 4-35; Code 1993, § 10-71)

Sec. 8-104. Rabies control and quarantine.

When a dog or cat that has bitten a human has been identified, the owner will be required to place the animal in quarantine as required by the state rabies control law, V.T.C.A., Health and Safety Code ch. 826, and the rules of the state board of health in effect at that time.

(Code 1978, § 4-36; Code 1993, § 10-72)

Secs. 8-105—8-121. Reserved.

ARTICLE III. LIVESTOCK [3]

Sec. 8-122. Definitions.

Sec. 8-123. Running at large.

Sec. 8-124. Keeping restricted.

Sec. 8-125. Staking and grazing.

Sec. 8-126. Potbelly pigs.

Secs. 8-127—8-150. Reserved.

Sec. 8-122. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Livestock means and includes any horse, mule, jack, jenny, cow, cattle, hog, sheep, goat or similar animal; but shall not include potbelly pigs.

Potbelly pigs means and includes Vietnamese miniature potbelly pigs meeting the published breed definition for registration by a recognized association for breeding such Vietnamese miniature potbelly pigs and weighing less than 200 pounds and standing no taller than 36 inches at the shoulders.

(Code 1978, § 4-44; Code 1993, § 10-96; Ord. No. 91-15, 12-16-1991)

Sec. 8-123. Running at large.

It shall be unlawful for the owner, keeper or person in charge of any livestock to allow or permit the same to be or run at large within the limits of the city.

(Code 1978, § 4-45; Code 1993, § 10-97)

Sec. 8-124. Keeping restricted.

The following restrictions shall apply to all livestock kept within the city:

(1) All livestock kept on land which is immediately adjacent to a single-family residence or a single-family residential platted lot shall be kept in a stable, shed or pen, or a fenced pasture, which stable, shed, pen or fenced pasture shall be at least 100 feet distant from every such single-family residence or single-family residential platted lot.

(2) No livestock shall be kept in any pasture or on any lot which is less than one acre (43,560 square feet) in area. The maximum number of animals kept per one-acre area shall not exceed one per acre.

(3) For the purposes of determining whether or not the property contains one acre in area, any areas containing a single-family residence or other building, swimming pool or structure, shall not be taken into consideration. The one acre must be devoted entirely to pasture land.

(4) If a single-family residence is constructed adjacent to an area where livestock are being kept, the owner of the livestock shall have 60 days in which to comply with the terms of this section. If a tract or parcel of land adjacent to an area where livestock are being kept is platted in single-family residential lots, the owner of the livestock shall have 60 days in which to comply with the terms of this section.

(Code 1978, § 4-46; Code 1993, § 10-98)

Sec. 8-125. Staking and grazing.

It shall be unlawful for any person to stake any livestock for the purpose of grazing upon or within reach of any public street, alley, sidewalk or public place within the limits of the city.

(Code 1978, § 4-47; Code 1993, § 10-99)

Sec. 8-126. Potbelly pigs.

(a) All potbelly pigs shall be subject to the restrictions and ordinances set forth in article II of this chapter wherein those provisions apply to potbelly pigs. Article II, division 2, pertaining to restraint and impoundment, shall also apply to potbelly pigs where those restrictions apply; article II, division 3 of this chapter, vaccinations, shall also apply to potbelly pigs. Article V of this chapter, relating to impoundment of livestock and fowl, shall apply to miniature livestock, as does article VI of this chapter, relating to kennels, and article VII of this chapter, relating to rabies control; except that the hereinafter set forth restrictions shall be specifically applicable to potbelly pigs in addition to those which are already set out herein by reference.

(b) When no more than four female or neutered male potbelly pigs are kept, the stable, shed, pen or other enclosure in which they are kept shall be located at least 20 feet from every building or structure used for sleeping, dining or living, other than structures owned or occupied by the keeper of the potbelly pigs.

(c) No more than two potbelly pigs may be kept by any one owner at any one location within the city, unless it becomes a kennel and the owner complies with all the requirements of article VI of this chapter for the operation of a kennel.

(Code 1993, § 10-100; Ord. No. 91-15, § 4-48, 12-16-1991)

Secs. 8-127—8-150. Reserved.

FOOTNOTE(S):

--- (**3**) ---

State Law reference— Livestock, V.T.C.A., Agriculture Code ch. 141 et seq. (Back)

ARTICLE IV. FOWL

Sec. 8-151. Definitions.

Sec. 8-152. Running at large.

Sec. 8-153. Keeping restricted.

Secs. 8-154—8-174. Reserved.

Sec. 8-151. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Fowl means and includes chickens, turkeys, geese, guineas, ducks or pigeons and other similar birds.

(Code 1978, § 4-59; Code 1993, § 10-121)

Sec. 8-152. Running at large.

It shall be unlawful for any person raising or keeping any fowl to permit or allow the same to run at large or to be at large upon the public streets, alleyways or public grounds of the city. Any fowl upon public streets, alleyways or public grounds of the city shall be considered a public nuisance and to be at large in violation of this section.

(Code 1978, § 4-60; Code 1993, § 10-122)

Sec. 8-153. Keeping restricted.

It shall be the duty of every person raising or keeping more than the number of ten fowl to keep them in a pen, coop or enclosure, and the same shall be kept in a sanitary condition, and shall also be kept in such a manner as will be reasonably calculated not to become offensive to adjacent neighbors or to the public.

(Code 1978, § 4-61; Code 1993, § 10-123)

Secs. 8-154—8-174. Reserved.

ARTICLE V. IMPOUNDMENT OF LIVESTOCK AND FOWL

Sec. 8-175. Authority.

Sec. 8-176. Right of entry.

Sec. 8-177. Notice.

Sec. 8-178. Right to redeem.

Sec. 8-179. Time for redemption.

Sec. 8-180. Disposition of funds.

Secs. 8-181—8-200. Reserved.

Sec. 8-175. Authority.

Any livestock or fowl found in violation of the provisions of this chapter may be seized and impounded by designated agents of the city, whether such animal or fowl shall be in the immediate presence of its owner or custodian or otherwise.

(Code 1978, § 4-73; Code 1993, § 10-146)

Sec. 8-176. Right of entry.

Any officer or designated agent of the city charged with the enforcement of the provisions of this chapter is hereby authorized to enter upon any unfenced lot, tract or parcel of land for the purpose of seizing and impounding any animal or fowl found thereon in violation of the provisions of this chapter.

(Code 1978, § 4-74; Code 1993, § 10-147)

Sec. 8-177. Notice.

Upon the impoundment of any animal or fowl under the provisions of this article, proper notice thereof shall be given the owner or keeper of such animal or fowl by mail, publication or posting such notice at the city hall.

(Code 1978, § 4-75; Code 1993, § 10-148)

Sec. 8-178. Right to redeem.

The owner of any animal or fowl which has been impounded under the provisions of this article shall have the right to redeem the same upon the payment of any and all fees which may be due and payable for the impoundment of such animal; provided, however, the payment of such impoundment fees shall not bar the imposition of any fine which may be imposed for the violation of this chapter.

(Code 1978, § 4-76; Code 1993, § 10-149)

Sec. 8-179. Time for redemption.

All impounded dogs and cats shall be redeemed within three days after the notice of impoundment has been posted, published or delivered; and all other animals and fowl shall be redeemed within five days after such notice. Any animal or fowl not redeemed within such time may be sold, destroyed or otherwise disposed of.

(Code 1978, § 4-77; Code 1993, § 10-150)

Sec. 8-180. Disposition of funds.

It shall be the duty of the chief of police to pay all monies collected by him under the terms of this chapter to the city secretary to be deposited in the general fund of the city.

(Code 1978, § 4-80)

Secs. 8-181—8-200. Reserved.

ARTICLE VI. KENNELS

Sec. 8-201. Definitions.

Sec. 8-202. License—Required.

Sec. 8-203. Same—Qualifications.

Sec. 8-204. Same—Issuance.

Sec. 8-205. Keeping small animals.

Sec. 8-201. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Animals means dogs, cats, rabbits, rats and any and all other normally four-legged animals, excluding cows and horses.

Kennel means the keeping, harboring or boarding of five or more animals over six months of age, and the place or premises where the same are kept.

Owner means any person owning, keeping or harboring animals.

(Code 1978, § 4-92; Code 1993, § 10-176)

Sec. 8-202. License—Required.

It shall be unlawful for any person or owner to own or operate a kennel within the city unless such owner shall have first qualified for and obtained a kennel license from the city.

(Code 1978, § 4-93; Code 1993, § 10-177)

Sec. 8-203. Same—Qualifications.

Before any owner can secure a license for the operation of a kennel, he shall comply with the following requirements:

(1) *Application.* File an application in writing with the city secretary setting forth in such application the type and number of animals the owner wishes to maintain, the name and address of the owner thereof, a brief sketch showing the layout of the proposed kenneling area in relationship with the tract of land it will be situated on, and the location of the property where such kennel will exist.

(2) *Fee.* Pay an annual license fee to the city secretary fee as currently established or as hereafter adopted by resolution of the city council from time to time.

(3) *Vaccination.* If a kennel license is sought for dogs, present satisfactory proof to the city secretary indicating that such dogs have been properly vaccinated and that they have been properly registered and licensed by the city in accordance with the provisions of this chapter.

(4) *Proximity to dwellings.* Furnish written proof that the kennel area will not be within 500 feet of any resident dwelling house, or other building normally occupied by people, excepting the resident dwelling house of the owner of such kennel.

(5) *Health inspections.* Agree to keep the kennel area in a sanitary manner at all times and allow inspection and approval by the city health officer.

(Code 1978, § 4-94; Code 1993, § 10-178)

Sec. 8-204. Same—Issuance.

No kennel license shall be issued by the city secretary unless all of the qualifications as set forth in section 8-203 shall have been complied with, to the satisfaction of the city secretary; any appeal from the decision of the city secretary shall be made directly to the city council.

(Code 1978, § 4-95; Code 1993, § 10-179)

Sec. 8-205. Keeping small animals.

It shall be the duty of every person raising or keeping the number of four or more rabbits, guinea pigs, dogs, white rats, white mice, hamsters and other small animals to keep such animals in a pen, coop or enclosure, and that same shall be kept in a sanitary condition, and shall also be kept in such a manner as same will be in a sanitary condition and shall not become offensive to adjacent neighbors or to the public. This section will not apply to authorized veterinarian hospitals for the treatment of domestic animals. This section shall not apply to the keeping of dogs or cats as domestic pets only and not for breeding or for gain.

(Code 1978, § 4-96; Code 1993, § 10-180)

Chapter 9 RESERVED

Chapter 10 BUILDINGS AND BUILDING REGULATIONS [1]

ARTICLE I. - IN GENERAL

ARTICLE II. - BUILDING CODE

ARTICLE III. - RESIDENTIAL CODE

ARTICLE IV. - AIR CONDITIONING AND MECHANICAL WORK

ARTICLE V. - ELECTRICITY

ARTICLE VI. - PLUMBING AND GAS

ARTICLE VII. - BUILDING/DEVELOPMENT STANDARDS

ARTICLE VIII. - FLOOD DAMAGE PREVENTION

ARTICLE IX. - SUBSTANDARD BUILDINGS

FOOTNOTE(S):

--- (**1**) ---

Charter reference— Department of community development, § 7.11. (Back)

State Law reference— Regulation of land use, structures, businesses and related activities, V.T.C.A., Local Government Code ch. 211 et seq. (Back)

ARTICLE I. IN GENERAL

Sec. 10-1. Fencing of swimming pools, related structures.

Secs. 10-2—10-20. Reserved.

Sec. 10-1. Fencing of swimming pools, related structures.

(a) *Definitions.* The following words, terms and phrases, when used in this subsection, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Poolside means the side of an object nearest to a swimming pool.

Private residential swimming pool means any swimming pool located on private property under the control of the head of household there residing, the use of which is limited to swimming or bathing by members of such head's family or their invited guests.

Public swimming pool means any swimming pool, other than a private residential swimming pool, used or designed to be used collectively by numbers of persons for swimming or bathing operations, whether the admission of such persons is free of charge or not.

Swimming pool or related structure means any structure, basin, chamber or tank containing an artificial body of water or other liquid having a depth of two feet or more at any point, including but not limited to private residential swimming pools, public swimming pools, oil vats, detention ponds, ponds, and any and all bodies of water or other liquid used for swimming, diving or recreational bathing. Expressly excluded from this definition are stock tanks and other open structures having at least one side with a 3:1 slope.

(b) *Enclosure required.* Every person in possession of land within the corporate limits of the city, either as owner, purchaser under contract, lessee, tenant, or licensee, upon which is situated a swimming pool or related structure shall, except as hereinafter set forth, at all times maintain upon the lot or premises on which the swimming pool or related structure is located, and completely surrounding the swimming pool or related structure, lot or premises, a fence, wall or other solid structure designed to prevent small children from inadvertently wandering into the swimming pool or related structure.

(1) Such fence, wall or other solid structure shall not be less than four feet in height, with no openings therein, other than self-latching doors or gates, of a width greater than four inches, and without a fixed or detachable stile or ladder.

(2) All gates or doors opening into such enclosure shall be equipped with self-closing and self-latching devices capable of automatically closing such gates or doors.

(3) The self-latching devices shall be fixed to the gates or doors not less than 30 inches in height above the highest surface below such gate or door.

(c) *When permit not required.* If a swimming pool or related structure is in a patio, in a court or in a room which can be reached only through the living quarters of the person in possession of the land, there need be no other enclosure and such gates or doors as may be in such living quarters enclosure need not be equipped as required by subsection (b) of this section.

(d) *Exemption permit.* If a swimming pool or other related structure is so remote from populated areas that the space surrounding the pool would be a deterrent to keep small children from inadvertently wandering into the swimming pool or other structure, then upon determination by the city that the pool is located a sufficient distance away from populated areas, the city may issue a permit to the landowner exempting him from this section, such permit to be renewable every year from the date of issuance. Upon the date of issuance, the landowner must submit sufficient evidence that the area surrounding the pool has not become populated. If the area becomes populated, the city shall revoke the permit and require compliance with this section within 30 days following such revocation.

(e) *Use of structure.* A single-family dwelling house or accessory building may be used as part of the enclosure required by this section, whether fence, wall or other solid structure, around a private residential swimming pool.

(f) *Inspection, approval.* The final inspection and approval of a swimming pool for which a building permit is issued by the city shall be withheld until all requirements of this section have been complied with by the owner, purchaser under contract, lessee, tenant, or licensee, and so certified by the city administrator, or his duly authorized agent.

(g) *Compliance.* It shall be unlawful for any person to maintain any swimming pool in the city which is not enclosed in accordance with the requirements of this section or which does not have a valid permit exempting it from the operation of this section.

(Code 1978, § 5-2; Code 1993, § 14-2)

Secs. 10-2—10-20. Reserved.

ARTICLE II. BUILDING CODE

Sec. 10-21. International Building Code adopted.

Sec. 10-22. Amendments to the International Building Code.

Secs. 10-23—10-47. Reserved.

Sec. 10-21. International Building Code adopted.

The International Building Code, 2012 edition (nonresidential), hereinafter sometimes referred to as the "code," as published by the International Code Council, Inc., is hereby adopted. A copy of said code is attached to the ordinance from which this section is derived and made a part hereof for all purposes, an authentic copy of which shall be kept on file with the city secretary.

(Code 1993, § 14-35; Ord. No. 2005-13, § 1(14-35), 12-19-2005; Ord. No. 2014-10, § 1(14-35), 5-5-2014)

State law reference— International Building Code as the commercial building code in this state, V.T.C.A., Local Government Code § 214.216.

Sec. 10-22. Amendments to the International Building Code.

(a) Section 101.4.1 of the building code adopted in section 10-21 is hereby amended to read as follows:

101.4.1 Electrical. The provisions of the National Electrical Code, 2011 edition, shall apply to the installation of electrical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and appurtenances thereto.

(b) Section 103 of said code is hereby amended to provide as follows:

103 Department of Building Safety. The enforcement of this code shall be under the administrative and operational control of the building official. The building official shall have such duties, and shall be selected and serve in the position at the pleasure of the city manager and may be removed without cause by city manager. The building official may appoint deputies to assist him/her,. Said deputies shall serve at the pleasure of the building official and may be removed without cause by the building official.

(c) Section 104 of said code is hereby amended to provide as follows:

104. Powers and Duties of the Building Official.

104.1 General. The building official is hereby authorized and directed to enforce all of the provisions of this code. The building official shall have the power to render interpretations of this code and to adopt and enforce written rules and supplemental regulations in order to clarify the application of its provisions. Such interpretations, rules and regulations shall be in conformance with the intent and purpose of this code.

104.3 Stop Orders. Whenever any work is being done contrary to the provisions of this code, the building official may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done, and any such persons shall stop work until authorized in writing by the building official to proceed with the work.

(d) Section 105 of said code is hereby amended and by adding new sections 105.2.2 and 105.8 to provide as follows:

105.2. Work exempt from permit.

105.2.2. Fences not over 8 feet high.

105.8 Liability Insurance. The person or entity that will actually perform the work or services covered by a permit shall provide to the city evidence of comprehensive general liability insurance, issued by a company licensed to do business in Texas, in the following amounts, for the duration of the permit, and shall furnish certificates of insurance to the city as evidence thereof. The certificates shall provide that the insurance shall not be canceled, reduced, or changed without 30 days advance notice to the city.

Comprehensive general liability insurance covering all risks associated with the work, with a minimum limit as currently established or as hereafter adopted by resolution of the city council from time to time, or a property damage limit equal to or exceeding the amount of the contract amount, whichever is greater.

(e) Section 109.4 of said code is hereby amended to provide as follows:

109.4 Work commencing before permit issuance. The fee for work commenced without a permit shall be double the fee set forth in the fee schedule adopted by the city.

(f) Section 111.1 of said code is hereby amended to provide as follows:

111.1 Use and Occupancy. No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made, until the building official has issued a certificate of occupancy therefor as provided herein.

Issuance of certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the city. Certificates presuming to give authority to violate or cancel the provisions of this code, or other ordinances of the city shall not be valid.

(g) Section 113.1 of the code is hereby amended to provide as follows:

113.1 Appeals. Appeals of orders, decisions, or determinations made by the city's building official in interpreting or applying this code shall be to the city council. The city council may obtain the assistance of persons who are qualified by experience and training on a particular subject under consideration.

(h) Section 113.2 and 113.3 of the code are hereby deleted in their entirety.

(i) Section 903, entitled "Automatic Sprinkler Systems" is hereby deleted in its entirety. Sprinkler systems are required as provided in the International Fire Code, 2012 edition, as adopted.

(j) Section 1507.8 of said code is hereby amended to provide as follows:

1507.8 Wood Shingles and Shakes.

(a) Allowed roof coverings of any structure regulated by this code shall be as provided in this section.

(b) Wood shingles and shakes are not allowed, shall not be allowed as an alternative material, and shall not be installed or used on any new construction or reproofing of any structure.

(c) Existing structures which have wood shingles or shakes may be repaired with fire-retardant shingles or shakes of a comparable grade; however, owners shall have the option of installing any allowed Class A, Class B, or Class C roofing material, over the existing wood shingles and shakes, providing the existing roof structural system is adequate for modification. "Repair" means the replacement of damaged or destroyed shingles or shakes, provided the area repaired does not exceed twenty-five percent (25%) of the square foot surface area of the

roof. A wood shingle or shake roof may not be replaced with wood shingles or shakes in increments which are undertaken as repairs.

(k) Section 1507.9 of said code is hereby deleted in its entirety.

(l) Appendices.

(1) The following appendices contained in this code are deleted in their entirety:

Appendix A, Employee Qualifications;

Appendix B, Board of Appeals;

Appendix D, Fire Districts;

Appendix E, Supplementary Accessibility Requirements;

Appendix H, Signs; and

Appendix I, Patio Covers.

(2) The following Appendices are hereby adopted in their entirety:

Appendix C, Group U—Agricultural Buildings;

Appendix F, Rodent Proofing;

Appendix G, Flood-Resistant Construction;

(3) Appendix J of said code is hereby amended to provide as follows:

J106.1 Maximum Slope. The slope of cut surfaces shall be no steeper than is safe for the intended use, and shall be no steeper than 3 horizontal to 1 vertical (33 percent) unless the applicant furnishes a soils report justifying a steeper slope.

Exceptions:

A cut surface may be at a slope of 2 horizontal to 1 vertical (50 percent) provided that all the following are met:

1.1. It is not intended to support structures or surcharges.

1.2. It is adequately protected against erosion.

1.3. It is no more than 8 feet (2438 mm) in height.

1.4. It is approved by the building official.

A cut surface in bedrock shall be permitted to be at a slope of 1 horizontal to 1 vertical (100 percent).

J107.6 Maximum Slope. The slope of fill surfaces shall be no steeper than is safe for the intended use. Fill slopes steeper than 3 horizontal to 1 vertical (33 percent) shall be justified by soils reports or engineering data.

(Code 1993, § 14-36; Ord. No. 2005-13, § 1(14-36), 12-19-2005; Ord. No. 2014-10, § 1(14-36), 5-5-2014)

Secs. 10-23—10-47. Reserved.

ARTICLE III. RESIDENTIAL CODE

Sec. 10-48. International Residential Code adopted.

Sec. 10-49. Conflicts.

Sec. 10-50. Enforcement.

Sec. 10-51. Amendments to the International Residential Code.

Secs. 10-52—10-75. Reserved.

Sec. 10-48. International Residential Code adopted.

The International Residential Code, 2012 edition, hereinafter sometimes referred to as the "code," as published by the International Code Council, Inc., is hereby adopted. A copy of said code is attached to the ordinance from which this section derives and made a part hereof for all purposes, an authentic copy of which has been filed with the city secretary.

(Code 1993, § 14-325; Ord. No. 2001-25, § 1, 1-7-2002; Ord. No. 2007-13, § 3(14-325), 11-5-2007; Ord. No. 2014-10, § 4(14-325), 5-5-2014)

State law reference— International Residential Code as the municipal residential building code in the state, V.T.C.A., Local Government Code § 214.212.

Sec. 10-49. Conflicts.

Upon any conflict with the provisions of the residential code adopted by section 10-48 and the provisions of this Code, state law or city ordinances, rules or regulations, the provisions of this Code of Ordinances, state law or city ordinances, rules or regulations shall prevail and be controlling.

(Code 1978, § 11-17; Code 1993, § 14-326)

Sec. 10-50. Enforcement.

The code adopted by section 10-48 shall be enforced by the building inspector.

(Code 1978, § 11-18; Code 1993, § 14-327)

Sec. 10-51. Amendments to the International Residential Code.

(a) Section R103 of the residential code adopted in section 10-50 is hereby amended to provide as follows:

R103 Department of Building Safety. The enforcement of this code shall be under the administrative and operational control of the building official. The building official shall have such duties, and shall be selected and serve in the position at the pleasure of the city manager and may be removed without cause by city manager. The building official may appoint deputies to assist him/her,. Said deputies shall serve at the pleasure of the building official and may be removed without cause by building official.

(b) Section R105.2 of said code is hereby amended to provide as follows:

Section R105.2. Work exempt from permit.

105.2.2. Fences not over 8 feet high.

(c) Section R105.5 of said code is hereby amended to provide as follows:

R105.5 Expiration. No construction schedule. Every permit issued shall become invalid unless the work at the site authorized by such permit is commenced within 180 days after its issuance. The building official is authorized to grant, in writing, an extension or extensions of such permit, provided the maximum term of said permit shall not exceed one and one-half (1½) years. If any permitted work is not completed within this limitation, then the permit shall become invalid and must be

reissued in order to resume work, together with payment of fees for such reissued permit. Section R103 of said code is hereby amended to provide as follows:

(d) Section R105 of said code is hereby amended by adding a new section R105.10 to provide as follows:

R105.10 Liability Insurance. The person or entity that will actually perform the work or services covered by a permit shall provide to the city evidence of comprehensive general liability insurance, issued by a company licensed to do business in Texas, in the following amounts, for the duration of the permit, and shall furnish certificates of insurance to the city as evidence thereof. The certificates shall provide that the insurance shall not be canceled, reduced, or changed without 30 days advance notice to the city.

Comprehensive general liability insurance covering all risks associated with the work, with a minimum limit as currently established or as hereafter adopted by resolution of the city council from time to time, or a property damage limit equal to or exceeding the amount of the contract amount, whichever is greater.

(e) Section R108 of the code is amended by adding to section R108.2 the following provision:

R108.2 Schedule of permit fees. Fees shall be charged in accordance with the city's fee schedule, as it may be amended from time to time.

(f) Section R108 of said code is hereby amended by adding a new section R108.6 to provide as follows:

R108.6 Work commencing before permit issuance. The fee for work commenced without a permit shall be double the fee set forth in the fee schedule adopted by the city.

(g) Section R112.1 of the code is hereby deleted and new section 112.1 is substituted therefor as follows:

112.1. Appeals. Appeals of orders, decisions, or determinations made by the city's building official in interpreting or applying this code shall be to the city council. The city council may obtain the assistance of persons who are qualified by experience and training on a particular subject under consideration.

(h) Section R112.3 of the code is hereby deleted in its entirety.

(i) Section R113 of the code is deleted in its entirety and the penalty provision of this Ordinance is substituted in its place.

(j) Sections R905.7 and R905.8 of the code are deleted in their entirety and a new section R905.7 is substituted therefor as follows:

R905.7 Wood Shingles and Shakes.

(a) Allowed roof coverings of any structure regulated by this code shall be as provided in this section.

(b) Wood shingles and shakes are not allowed, shall not be allowed as an alternative material, and shall not be installed or used on any new construction or re-roofing of any structure. Existing structures which have wood shingles or shakes may be repaired with fire-retardant shingles or shakes of a comparable grade; however, owners shall have the option of installing any allowed Class A, Class B, or Class C roofing material, over the existing wood shingles and shakes, provided that the existing roof structural system is adequate for modification. "Repair" means the replacement of damaged or destroyed shingles or shakes, provided the area repaired does not exceed twenty-five percent (25%) of the square foot surface area of the roof. A wood shingle or shake roof may not be replaced with wood shingles or shakes in increments which are undertaken as repairs.

(k) Appendices. The following appendices contained in the code are deleted in their entirety:

Appendix E, Manufactured Housing Used As Dwellings

Appendices B through D contained in the code are hereby adopted.

(Code 1993, § 14-328; Ord. No. 2001-25, §§ 2, 3, 1-7-2002; Ord. No. 2007-13, § 3(14-328), 11-5-2007; Ord. No. 2014-10, § 4(14-328), 5-5-2014)

Secs. 10-52—10-75. Reserved.

ARTICLE IV. AIR CONDITIONING AND MECHANICAL WORK

Sec. 10-76. International Mechanical Code adopted.

Sec. 10-77. Amendments to the International Mechanical Code.

Sec. 10-78. Work done by homeowners.

Sec. 10-79. Work restricted.

Sec. 10-80. Issuance of permits restricted.

Sec. 10-81. Misuse of city registration.

Sec. 10-82. Supervision of work.

Sec. 10-83. Payroll records.

Sec. 10-84. Suspension, withholding or revocation.

Secs. 10-85—10-111. Reserved.

Sec. 10-76. International Mechanical Code adopted.

The International Mechanical Code, 2012 edition, hereinafter sometimes referred to as the "code," as published by the International Code Council, Inc., is hereby adopted. A copy of said code is attached hereto and made a part hereof for all purposes, an authentic copy of which has been filed with the city secretary.

(Code 1993, § 14-65; Ord. No. 2001-24, § 1, 1-7-2002; Ord. No. 2007-13, § 1(14-65), 11-5-2007; Ord. No. 2014-10, § 2(14-65), 5-5-2014)

Sec. 10-77. Amendments to the International Mechanical Code.

(a) Section 103 of the mechanical code adopted in section 10-76 is hereby amended to provide as follows:

103 Department of Building Safety. The enforcement of this code shall be under the administrative and operational control of the building official. The building official shall be selected and serve in the position at the pleasure of the city manager and may be removed without cause by city manager. The building official may appoint deputies to assist him/her. Said deputies shall serve at the pleasure of the building official and may be removed without cause by the building official.

(b) Sections 106.4.3 and 106.4.4 of said code are deleted in their entirety and a new section 106.4.3 is substituted therefor as follows:

106.4.3 Expiration. Every permit issued shall become invalid unless the work at the site authorized by such permit is commenced within 180 days after its issuance. The building official is authorized to grant, in writing, an extension or extensions of such permit, provided the maximum term of such permit shall not exceed one and one-half (1½) years. If any permitted work is not

completed within this limitation, then the permit shall become invalid and must be reissued in order to resume work, together with payment of fees for such reissued permit.

(c) Section 106 of said code is amended by adding a new section 106.5.4, to provide as follows:

106.5.4 State License. All persons performing work within the city governed by this code shall be licensed by the State of Texas, and shall submit to the city proof of insurance as required by the state or by statute.

(d) Said code is amended by deleting section 106.5 and appendix B, entitled "Permit Fee Schedule" as fees shall be charged in accordance with the city's fee schedule, as it may be amended from time to time.

(e) Section 109 of said code is hereby amended to provide as follows:

109. Means of Appeal. Appeals of orders, decisions, or determinations made by the building official in interpreting or applying this code shall be to the city council. The city council may obtain the assistance of persons who are qualified by experience and training on the particular subject under consideration.

(Code 1993, § 14-66; Ord. No. 2001-24, § 2, 1-7-2002; Ord. No. 2007-13, § 1(14-66), 11-5-2007; Ord. No. 2014-10, § 2(14-66), 5-5-2014)

Sec. 10-78. Work done by homeowners.

A homeowner shall be permitted to do mechanical work on the dwelling he resides in, provided a permit is acquired for such work and the work is inspected and approved by the city.

(Code 1978, § 5-34; Code 1993, § 14-67; Ord. No. 2007-13, § 1(14-67), 11-5-2007)

Sec. 10-79. Work restricted.

No mechanical work shall be performed by any person not the holder of a state license, if it is required by the state to have a license, and having complied with all requirements of the state for the performance of such work.

(Code 1978, § 5-39; Code 1993, § 14-72; Ord. No. 2007-13, § 1(14-68), 11-5-2007)

Sec. 10-80. Issuance of permits restricted.

A holder of a master mechanical installer's license who is employed as a master for a person shall take out mechanical permits only for that person, and shall supervise, direct and control the mechanical work for which the mechanical permit is obtained. A master who is engaged in the mechanical business for himself shall take out mechanical permits for his business only and no mechanical permit shall be taken out by any master that he does not supervise, direct and control the mechanical work for which the permit was obtained.

(Code 1978, § 5-41; Code 1993, § 14-73; Ord. No. 2007-13, § 1(14-69), 11-5-2007)

Sec. 10-81. Misuse of city registration.

No master mechanical installer shall assign or in any other way convey his registration, the use thereof, or any rights thereunder, to anyone by power of attorney or any other process, or become involved in any type of agreement, assignment or use whereby the master will not have supervision, direction and control of the mechanical work for which the mechanical permit is obtained by the master.

(Code 1978, § 5-42; Code 1993, § 14-74; Ord. No. 2007-13, § 1(14-70), 11-5-2007)

Sec. 10-82. Supervision of work.

All mechanical work performed within the city shall be done under the control, supervision, direction and responsibility of a master. Any other worker who performs the mechanical work under the supervision, control and responsibility of the master shall be an employee of the master.

(Code 1978, § 5-43; Code 1993, § 14-75; Ord. No. 2007-13, § 1(14-71), 11-5-2007)

Sec. 10-83. Payroll records.

For purposes of enforcing this article, the mechanical inspector, or his designated representative, may examine the payroll records for the preceding 12 months of the master, during normal business hours. Should the master fail or refuse to make a full, true and accurate disclosure of his payroll records, the mechanical inspector may, after written notification by certified mail, withhold the issuance of mechanical permits to that master until such time as there has been a full, true and accurate disclosure of the payroll records. Violation of this section will be subject to the penalty as provided in section 1-14 of this Code.

(Code 1978, § 5-44; Code 1993, § 14-76; Ord. No. 2007-13, § 1(14-72), 11-5-2007)

Sec. 10-84. Suspension, withholding or revocation.

(a) When given a ten-day notice by registered or certified mail, and after a hearing before a board appointed by the city council, where the person notified may be represented by an attorney at law of his choice, the holder of a license or certificate issued under the provisions of this article may have his license or certificate revoked or suspended by the city for any of the following reasons:

(1) Habitual drunkenness or the use of narcotics.

(2) Conviction of a crime involving moral turpitude.

(3) Adjudication of insanity.

(4) Fraud or misrepresentation in obtaining a registration or permit.

(5) Violating on more than one occasion, either willfully or maliciously, or by reason of incompetence, any provision of this article or the International Standard Mechanical Code or amendments thereto.

(6) Conviction of defrauding any person from whom he has rendered or contracted to render service.

(7) Securing permit for mechanical work not actually performed by the master or by licensed employees under his control, supervision and direction. This is intended to prevent a master from securing a permit for the purpose of evading the spirit and intent of this article by entering into any simulated scheme, transaction or device, whereby mechanical work will be done by persons who are not employees of the master, or employees of his employer.

(8) Securing a permit under any pretext for any installation concerning which applicant has no valid contract. This is intended to prevent a master from securing a permit for the purpose of evading the spirit and intent of this article by simulated scheme, transaction or device, or performing mechanical work without a valid permit.

(b) The city may withhold the issuing or renewal of a license or registration certificate to an applicant by the same process used for revocation or suspension as described in subsections (a)(1) thru (8) of this section.

(Code 1978, § 5-45; Code 1993, § 14-77; Ord. No. 2007-13, § 1(14-73), 11-5-2007)

Secs. 10-85—10-111. Reserved.

ARTICLE V. ELECTRICITY [2]

DIVISION 1. - GENERALLY

DIVISION 2. - ELECTRICAL INSPECTOR

DIVISION 3. - ELECTRICIANS

DIVISION 4. - PERMITS AND INSPECTIONS

FOOTNOTE(S):

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State Law reference— National Electrical Code as municipal electrical construction code, V.T.C.A., Local Government Code § 214.214. (Back)

DIVISION 1. GENERALLY

Sec. 10-112. Definitions.

Sec. 10-113. Liability for damages.

Sec. 10-114. Unfranchised public utilities.

Secs. 10-115—10-141. Reserved.

Sec. 10-112. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Apprentice electrician means the person undertaking electrical work under the direct, constant, personal supervision and control of either a licensed master electrician or a licensed journeyman electrician.

Electrical inspector means the building official or his designee as electrical inspector of the city charged with the enforcement of this article and all provisions of this Code and the pertaining city ordinances.

Electrical work means the installing, maintaining, altering, repairing or erecting of any electrical wiring, apparatus, devices, appliances, fixtures or equipment for which a permit is required by the provisions of this article, except poles and guy anchors installed by any electric, telephone, telegraph, signal and/or public service company as a part of its distribution system.

Journeyman electrician means those persons with four years substantiated electrical experience undertaking electrical work under the supervision, direction, and control of a licensed master electrician and who has been properly registered with the city. The term "journeyman electrician," however, shall not

include an "apprentice electrician," and nothing in this definition shall be construed as prohibiting an apprentice electrician from doing electrical work under the direct, constant, personal supervision and control of either a licensed master or a licensed journeyman electrician.

Master electrician means the holder of a master electrician's license as provided in this article.

(Code 1993, § 14-100; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2012-20, § 1(14-100), 11-5-2012)

Sec. 10-113. Liability for damages.

The provisions of this article shall not be construed to relieve from or lessen the responsibility of any party owning, operating, or controlling any electric wiring, apparatus, devices, appliances, fixtures or equipment for damages to person or property caused by any defect therein, nor shall the city be held as assuming by this section any such liability by reason of the inspection authorized in this article, or the certificates of approval issued as provided in this article, or otherwise.

(Code 1993, § 14-101; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2012-20, § 1(14-101), 11-5-2012)

Sec. 10-114. Unfranchised public utilities.

(a) No person or public service company that does not operate under a franchise granted by the city shall have the right to install any electrical conduit, wires, ducts, poles or equipment of any character for the transmission, distribution or utilization of electric energy, or for the operation of signals or the transmission of intelligence on, over or under the streets, in the city, without first obtaining from the city council a franchise right or grant for the particular installation so desired to be made, and any such installation so made under such franchise or grant shall be in strict conformity with all pertaining rules, regulations and ordinances of the city.

(b) Any installation of duct, conduit or wires under the public streets shall be in accordance with this article and other city ordinances covering the use of public places and streets.

(Code 1993, § 14-103; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2002-05, § 3, 3-18-2002; Ord. No. 2012-20, § 1(14-103), 11-5-2012)

Secs. 10-115—10-141. Reserved.

DIVISION 2. ELECTRICAL INSPECTOR

Sec. 10-142. Office established.

Sec. 10-143. Appointment.

Sec. 10-144. Office may be combined.

Sec. 10-145. Conflict of interest.

Sec. 10-146. Interfering with electricians in business.

Sec. 10-147. Duties.

Sec. 10-148. Right of entry.

Sec. 10-149. Disconnect service.

Sec. 10-150. Decision of questions.

Sec. 10-151. Review of decisions.

Sec. 10-152. Records.

Secs. 10-153—10-170. Reserved.

Sec. 10-142. Office established.

The office of the electrical inspector is hereby established in and for the city and shall be the city's building official or his designee.

(Code 1993, § 14-115; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2012-20, § 1(14-115), 11-5-2012)

Sec. 10-143. Appointment.

The electrical inspector shall be the city's building official or his designee.

(Code 1993, § 14-117; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2012-20, § 1(14-116), 11-5-2012)

Sec. 10-144. Office may be combined.

The chief electrical inspector may be the same person as the city building official.

(Code 1993, § 14-118; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2012-20, § 1(14-117), 11-5-2012)

Sec. 10-145. Conflict of interest.

It shall be unlawful for the electrical inspectors to engage in the business of the sale, installation or maintenance of electrical wiring, apparatus, devices, appliances, fixtures or equipment either directly or indirectly. They shall have no financial interest in any concern engaged in such business in the city at any time while holding the office of electrical inspector for the city.

(Code 1993, § 14-119; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2012-20, § 1(14-118), 11-5-2012)

Sec. 10-146. Interfering with electricians in business.

(a) It shall be unlawful for any person connected with the electrical inspection department of the city in any way whatsoever to solicit business of any kind for any master electrician, or assist or encourage the solicitation of any business for any master electrician.

(b) It shall be unlawful for any person connected with the electrical inspection department of the city to prevent or to assist in preventing any person from doing business with any master electrician whose license has not been suspended or revoked.

(Code 1993, § 14-120; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2012-20, § 1(14-119), 11-5-2012)

Sec. 10-147. Duties.

The electrical inspector shall, upon application, cause to be issued permits for the installation and alteration of electrical wiring, devices, appliances, fixtures, apparatus and equipment, and final inspections, and shall be responsible for inspection of all new electrical installations and re-inspections of all electrical installations, as provided for in this article.

(Code 1993, § 14-121; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2012-20, § 1(14-120), 11-5-2012)

Sec. 10-148. Right of entry.

The electrical inspector or his designee shall have the right to enter any building in the discharge of his official duties or for the purpose of making any inspection or re-inspection of the installation of electrical electric wiring, apparatus, devices, appliances, fixtures, and electrical equipment.

(Code 1993, § 14-122; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2012-20, § 1(14-121), 11-5-2012)

Sec. 10-149. Disconnect service.

The electrical inspectors are hereby empowered, in emergencies, to disconnect and to order the discontinuance of electrical services to any electric wiring, apparatus, device, appliance, fixture or equipment found to be dangerous to life or property within the provisions of this article until such wiring, apparatus, device, appliance, fixture or equipment and its installation has been made safe.

(Code 1993, § 14-123; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2012-20, § 1(14-122), 11-5-2012)

Sec. 10-150. Decision of questions.

The electrical inspector shall decide all questions not provided for in this article pertaining to the installation, operation, or maintenance of electric wiring and apparatus, subject to appeal to the city council.

(Code 1993, § 14-124; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2012-20, § 1(14-123), 11-5-2012)

Sec. 10-151. Review of decisions.

Any person aggrieved by any action of an electrical inspector may within ten days after such action file a petition, in writing, with the city council and thereupon the city council will render a decision within 15 days. The city council shall have the right to sustain, modify or reverse the action of any electrical inspector, provided, that until such time as the electrical inspector's action is reversed or modified by the city council, such action shall remain in effect. The decision of the city council shall be final.

(Code 1993, § 14-125; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2012-20, § 1(14-124), 11-5-2012)

Sec. 10-152. Records.

The electrical inspector shall keep complete records of all permits issued, inspections and re-inspections made, and other official work performed in accordance with the provisions of this article.

(Code 1993, § 14-126; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2012-20, § 1(14-125), 11-5-2012)

Secs. 10-153—10-170. Reserved.

DIVISION 3. ELECTRICIANS

Subdivision I. - In General

Subdivision II. - Master Electrician

Subdivision III. - Journeyman Electrician

Subdivision IV. - Apprentice Electrician Registration

Subdivision I. In General

Sec. 10-171. Work restricted.

Sec. 10-172. Homeowners.

Sec. 10-173. Supervision of work.

Secs. 10-174—10-210. Reserved.

Sec. 10-171. Work restricted.

No electrical work shall be performed by any person not holding a license required by the provisions of this division.

(Code 1993, § 14-140; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2012-20, § 1(14-140), 11-5-2012)

Sec. 10-172. Homeowners.

A homeowner shall be permitted to do electrical work on the dwelling he resides in, provided a permit is acquired for such work and the work is inspected and approved by the electrical inspector.

(Code 1993, § 14-141; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2012-20, § 1(14-141), 11-5-2012)

Sec. 10-173. Supervision of work.

All electrical work performed within the city shall be under the control, supervision, direction, and responsibility of a master electrician licensed by the state. A journeyman or apprentice electrician shall perform the actual work under the supervision, control and responsibility of a master electrician.

(Code 1993, § 14-147; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2002-05, § 4, 3-18-2002; Ord. No. 2004-11, § 2, 12-6-2004; Ord. No. 2012-20, § 1(14-147), 11-5-2012; Ord. No. 2014-10, § 3(14-147), 5-5-2014)

Secs. 10-174—10-210. Reserved.

Subdivision II. Master Electrician

Sec. 10-211. License required.

Sec. 10-212. Insurance.

Sec. 10-213. Issuance of permits restricted.

Sec. 10-214. Misuse of license.

Secs. 10-215—10-236. Reserved.

Sec. 10-211. License required.

Except as otherwise provided by this article, it shall be unlawful for any person to perform or contract for electrical work within the city unless such person is licensed by the state as a master electrician.

(Code 1993, § 14-185; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2004-11, § 2, 12-6-2004; Ord. No. 2012-20, § 1(14-185), 11-5-2012; Ord. No. 2014-10, § 1(14-185), 5-5-2014)

Sec. 10-212. Insurance.

(a) For any permits to be issued, the applicant must provide evidence of holding a comprehensive general liability insurance policy (including products liability and completions operations coverage) with minimum limits as currently established or as hereafter adopted by resolution of the city council from time to time. This policy must be issued by a carrier with a rating of B+ or better in the last published edition of Best's Insurance Reports-Property Casualty Volume (published by A. M. Best Company, Oldwich, New Jersey 08858). Proof of the coverage shall be provided in the form of a certificate issued by an authorized agent or employee of the company issuing the policy, that specifies coverage and identifies the insured. Each certificate shall provide that not less than 30 days' written notice shall be given to the city in the event of reduction or cancellation of the policy prior to the expiration date specified on the certificate, or lapse by nonrenewal.

(b) These insurance requirements would not apply to any permits obtained by homeowners as outlined in section 10-172

(Code 1993, § 14-194; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2014-10, § 3(14-193), 5-5-2014)

Sec. 10-213. Issuance of permits restricted.

A master electrician shall take out electrical permits only under his own license, and shall supervise, direct and control the electrical work for which the electrical permit is obtained.

(Code 1993, § 14-195; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2012-20, § 1(14-194), 11-5-2012)

Sec. 10-214. Misuse of license.

No master electrician shall assign or in any other way convey his license, its use, or its rights, to anyone by power of attorney or any other process, or become involved in any type of agreement, assignment or use whereby the master electrician will not have supervision, direction and control of the electrical work for which he has obtained electrical permits.

(Code 1993, § 14-196; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2012-20, § 1(14-195), 11-5-2012)

Secs. 10-215—10-236. Reserved.

Subdivision III. Journeyman Electrician

Sec. 10-237. License required.

Sec. 10-238. Display.

Secs. 10-239—10-269. Reserved.

Sec. 10-237. License required.

No person shall undertake any work as a journeyman electrician unless such person has first obtained the appropriate current state electrician license.

(Code 1993, § 14-210; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2004-11, § 2, 12-6-2004; Ord. No. 2012-20, § 1(14-210), 11-5-2012; Ord. No. 2014-10, § 3(14-210), 5-5-2014)

Sec. 10-238. Display.

Every journeyman electrician shall carry his license while performing the acts which this license entitles him to perform.

(Code 1993, § 14-15; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2012-20, § 1(14-210), 11-5-2012)

Secs. 10-239—10-269. Reserved.

Subdivision IV. Apprentice Electrician Registration

Sec. 10-270. License required.

Sec. 10-271. Display.

Secs. 10-272—10-290. Reserved.

Sec. 10-270. License required.

No person shall undertake any work as an apprentice electrician unless such person has first obtained the appropriate current state electrician license.

(Code 1993, § 14-230; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2004-11, § 2, 12-6-2004; Ord. No. 2012-20, § 1(14-230), 11-5-2012; Ord. No. 2014-10, § 3(14-230), 5-5-2014)

Sec. 10-271. Display.

Every apprentice electrician shall carry his license while performing the acts which this license entitles him to perform.

(Code 1993, § 14-234; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2012-20, § 1(14-234), 11-5-2012)

Secs. 10-272—10-290. Reserved.

DIVISION 4. PERMITS AND INSPECTIONS

Sec. 10-291. Permit required.

Sec. 10-292. Exceptions—Enumerated.

Sec. 10-293. Same—Compliance.

Sec. 10-294. Emergencies.

Sec. 10-295. Application.

Sec. 10-296. Checking of plans and specifications.

Sec. 10-297. Fees.

Sec. 10-298. Temporary installations.

Sec. 10-299. Display.

Sec. 10-300. Expiration.

Sec. 10-301. Refusal to finish installation.

Sec. 10-302. Suspension or revocation.

Sec. 10-303. Certificate of approval.

Sec. 10-304. Death of master electrician.

Sec. 10-305. Adoption.

Sec. 10-306. Special provisions.

Secs. 10-307—10-332. Reserved.

Sec. 10-291. Permit required.

No wiring, poles, duct line, apparatus, devices, appliances, fixtures or equipment for the transmission, distribution or utilization of electrical energy for any purpose shall be installed within the city limits, nor shall any alteration or addition be made to any such existing wiring, poles, duct lines, apparatus, devices, appliances, fixtures or equipment without first securing a permit.

(Code 1993, § 14-245; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2012-20, § 1(14-245), 11-5-2012)

Sec. 10-292. Exceptions—Enumerated.

(a) No permit shall be required for replacing fuses or lamps or the connection of portable equipment to suitable permanently installed receptacles or for repairs to portable appliances.

(b) No permit shall be required for replacing flush or snap switches, receptacles, light fixtures or minor repairs on permanently connected electrical appliances, replacement of small motors of same voltage, amperage, horsepower, but not to exceed three horsepower.

(c) No permit shall be required for the installation, maintenance or alteration of wiring poles and down guys, apparatus, devices, appliances or equipment for telegraph, telephone, signal service or central station protective service used in conveying signals or intelligence, except where electrical work is done on the primary side of the source of power at a voltage over 50 volts and of more than 500 watts.

(d) No permit shall be required for the installation, maintenance or alteration of electric wiring, apparatus, devices, appliances or equipment to be installed by an electric public service company for the use of such company in the generation, transmission, distribution, sale or utilization of electrical energy. However, an electric public service company shall not do any wiring on a customer's premises other than wiring which is a part of the company's distribution system, including metering equipment wherever located and transformer vaults in which company's transformers are located, nor shall any of its employees do any work other than that done for such company as hereinbefore provided for, by virtue of this exception.

(e) No permit shall be required for the installation of temporary wiring, apparatus, devices, appliances or equipment used by a recognized electrical training school or college.

(f) No permit shall be required for the installation and maintenance of railway crossing signal devices when such is performed by due authority of the railroad and in accordance with the standards of the American Railroad Association.

(Code 1993, § 14-246; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2012-20, § 1(14-246), 11-5-2012)

Sec. 10-293. Same—Compliance.

Where no permit is required for the installation or repair of wiring, apparatus, devices, or equipment for the transmission, distribution, or utilization of electrical energy for any purpose, the wiring, apparatus, devices or equipment shall be installed or repaired in conformity with the provisions of the version National Electrical Code adopted by Council.

(Code 1993, § 14-247; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2012-20, § 1(14-247), 11-5-2012)

Sec. 10-294. Emergencies.

The electrical inspector may issue and enforce any rules or regulations he may deem necessary covering the granting of emergency permits.

(Code 1993, § 14-251; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2012-20, § 1(14-251), 11-5-2012)

Sec. 10-295. Application.

(a) To obtain an electrical permit, the applicant shall first file an application in writing. Each application shall:

  (1) Identify and describe the work to be covered by the permit.

  (2) Describe the location of the proposed work by street address.

  (3) Show the use or occupancy of the building.

  (4) Be accompanied by plans and specifications as required by the electrical inspector. However, a permit may be issued covering part of a building or structure before the entire plans and specifications for the whole building or structure have been submitted or approved, provided adequate information and detailed statements have been made complying with all pertinent requirements of this article. The holder of such permit may proceed without assurance that the permit covering the work in the entire building or structure will be granted.

  (5) Be signed by the master electrician.

(b) The permit, when issued, shall be issued to the applicant to cover the proposed work as described and detailed. Any changes or additions must be covered by additional permits at the time changes are made.

(Code 1993, § 14-252; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2002-05, § 6, 3-18-2002; Ord. No. 2012-20, § 1(14-252), 11-5-2012)

Sec. 10-296. Checking of plans and specifications.

The application, plans, and specifications filed by an applicant for an electrical permit shall be checked by the electrical inspector. The issuance of a permit based upon these plans and specifications shall not prevent the electrical inspector from requiring the correction of errors. Such plans may be reviewed by other departments of the city to check compliance with laws and ordinances under their jurisdiction.

(Code 1993, § 14-253; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2002-05, § 7, 3-18-2002; Ord. No. 2012-20, § 1(14-253), 11-5-2012)

Sec. 10-297. Fees.

(a) Before any permit shall be issued, under the provisions of this division, the applicant shall pay fees according to the established schedule adopted by resolution of the city council from time to time.

(b) Ordinary fees will be doubled for any permit issued after the work has been started or after the work has been partially completed or concealed.

(c) In case it becomes necessary to make a re-inspection of any work, fees will be charged according to the established schedule.

(Code 1993, § 14-254; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2012-20, § 1(14-254), 11-5-2012)

Sec. 10-298. Temporary installations.

No permit for temporary use shall be valid for a longer period than 90 days unless required for construction purposes. At the end of 90 days, the electrical inspector may issue written instructions to the electric public service company to disconnect service to the temporary installation. A letter addressed to "occupant" at the address of the temporary installation shall be deemed as being sufficient to notify the owner, if name and address of owner is not known to the electrical inspector.

(Code 1993, § 14-255; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2012-20, § 1(14-255), 11-5-2012)

Sec. 10-299. Display.

Any permit for electrical work shall be displayed in a visible location.

(Code 1993, § 14-261; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2012-20, § 1(14-261), 11-5-2012)

Sec. 10-300. Expiration.

Every permit issued shall expire and become null and void if the building or work authorized by such permit is not commenced within 60 days from the date of the permit or if the building or work authorized by the permit has been suspended for a period of 180 days. Before such work can be restarted, a new permit shall be obtained.

(Code 1993, § 14-262; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2012-20, § 1(14-262), 11-5-2012)

Sec. 10-301. Refusal to finish installation.

Any electrical contractor who accepts payment for electrical work, then refuses to finish the work for which a permit was issued, shall, after written notification by the electrical inspector, and after being reviewed by the city council, be prohibited from pulling permits or performing new work within the city limits until such work is completed.

(Code 1993, § 14-263; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2012-20, § 1(14-263), 11-5-2012)

Sec. 10-302. Suspension or revocation.

The electrical inspector may, in writing, suspend or revoke an electrical permit issued under the provisions of this division whenever the permit is issued in error or on the basis of incorrect information supplied or when in violation of any ordinance, regulation or any of the provisions of this article.

(Code 1993, § 14-264; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2012-20, § 1(14-264), 11-5-2012)

Sec. 10-303. Certificate of approval.

When the electrical work is found to be in compliance with this article, the electrical inspector shall give approval to the public utility company authorizing connection of the electrical service.

(Code 1993, § 14-269; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2012-20, § 1(14-269), 11-5-2012)

Sec. 10-304. Death of master electrician.

After the death of a master electrician, for a period of 60 days, any person engaged in the electrical contractor business shall have the privilege of completing any work currently authorized under the master electrician's license.

(Code 1993, § 14-272; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2012-20, § 1(14-272), 11-5-2012; Ord. No. 2014-10, § 3(14-272), 5-5-2014)

Sec. 10-305. Adoption.

(a) With the passing of the ordinance from which this article derives, the 2011 edition of the National Electrical Code, NFPA 70, prepared by the National Fire Protection Association, Inc., will be adopted.

(b) In case of conflict between the provisions of the National Electrical Code and the provisions of this article, this article shall prevail.

(Code 1993, § 14-285; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2007-13, § 2, 11-5-2007; Ord. No. 2012-20, § 1(14-284), 11-5-2012; Ord. No. 2014-10, § 3(14-284), 5-5-2014)

Sec. 10-306. Special provisions.

(a) Temporary power poles shall have a minimum of two 120-volt duplex receptacles and one 240-volt receptacle.

(b) Electrical metallic tubing (EMT) shall not be buried in ground nor embedded in concrete.

(c) Aluminum conductors are only permitted to be installed in the following circumstances:

(1) Overhead between poles; and

(2) For new commercial buildings, 5,000 square feet or larger, on all service entrance conductors and feeder conductors, both interior and exterior, sized 4/0 and larger; and

(3) Underground from pole to pole or from pole to outside electrical box that is not attached to a building or structure.

(Code 1993, § 14-293; Ord. No. 2000-30, § 2, 1-2-2001; Ord. No. 2012-20, § 1(14-293), 11-5-2012; Ord. No. 2012-42, § 2, 10-15-2012; Ord. No. 2012-49, § 2, 11-19-2012)

Secs. 10-307—10-332. Reserved.

ARTICLE VI. PLUMBING AND GAS

DIVISION 1. - GENERALLY

DIVISION 2. - CODES

DIVISION 1. GENERALLY

Sec. 10-333. Compliance with plumbing license law required.

Secs. 10-334—10-356. Reserved.

Sec. 10-333. Compliance with plumbing license law required.

Before any person shall do any work or make any connections with the sewer or gas system in the city, or do any plumbing work connected or intended to be connected with the sewer or gas system, he shall be licensed as provided in the state plumbing license law, V.T.C.A., Occupations Code ch. 1301.

(Code 1978, § 19-1; Code 1993, § 14-390)

Secs. 10-334—10-356. Reserved.

DIVISION 2. CODES

Sec. 10-357. International Plumbing Code adopted.

Sec. 10-358. Amendments to the International Plumbing Code.

Secs. 10-359—10-368. Reserved.

Sec. 10-357. International Plumbing Code adopted.

The International Plumbing Code, 2012 edition, hereinafter sometimes referred to as the "code," as published by the International Code Council, Inc., and as amended herein, is hereby adopted. A copy of said code is attached hereto and made a part hereof for all purposes, an authentic copy of which has been filed with the city secretary.

(Code 1993, § 14-405; Ord. No. 2001-26, § 1, 1-7-2002; Ord. No. 2007-13, § 4(14-405), 11-5-2007; Ord. No. 2014-10, § 5(14-405), 5-5-2014)

Sec. 10-358. Amendments to the International Plumbing Code.

(a) Section 103 of the plumbing code adopted in section 10-357 is hereby amended to provide as follows:

103 Department of Plumbing Inspection. The enforcement of this code shall be under the administrative and operational control of the building official. The building official shall be selected and serve in the position at the pleasure of the city manager and may be removed without cause by city manager. The building official may appoint deputies to assist him/her,. Said deputies shall serve at the pleasure of the building official and may be removed without cause by the building official.

(b) Section 104 of said code is hereby amended to provide as follows:

104.7 Stop Work Orders. Whenever any work is being done contrary to the provisions of this code, the Building official may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done, and any such persons shall stop work until authorized in writing by the building official to proceed with the work. The building official shall issue all necessary notices or orders to ensure compliance with this code.

(c) Sections 106.5.3 and 106.5.4 of said code are deleted in their entirety and a new section 106.5.3 is substituted therefor as follows:

106.5.3 Expiration. Every permit issued shall become invalid unless the work at the site authorized by such permit is commenced within 180 days after its issuance. The building official is authorized to grant, in writing, an extension or extensions of such permit, provided the maximum term of said permit shall not exceed one and one-half (1½) years. If any permitted work is not

completed within this limitation, then the permit shall become invalid and must be reissued in order to resume work, together with payment of fees for such reissued permit.

(d) Section 106.6 of said code is hereby amended to provide as follows:

106.6 Fees. Fees shall be charged in accordance with the city's fee schedule, as it may be amended from time to time. The fee for work commenced without a permit shall be double the fee set forth in the fee schedule adopted by the city.

(e) Section 106 of said code is amended by adding a new section 106.6.4, which provides as follows:

106.6.4 State License. All persons performing work in the city governed by this code shall be licensed by the State of Texas, and shall submit to the city proof of insurance as required by the State or by statute.

(f) Section 109 of said code is hereby amended to provide as follows:

109. Means of Appeal. Appeals of orders, decisions, or determinations made by the building official in interpreting or applying this code shall be to city council. The city council may obtain the assistance of persons who are qualified by experience and training on the particular subject under consideration.

(g) Section 108 of said code is deleted in its entirety and the penalty provision of this Ordinance is substituted in its place.

(h) Section 605 of said code is amended by deleting any and all references to "polybutylene pipe and tubing." Installation of polybutylene pipe and tubing, or use for repair, is prohibited.

(i) Section 702 of said code is amended by deleting any and all references to concrete pipe and asbestos-cement pipe and tubing. Installation of concrete pipe or asbestos-cement pipe and tubing, or use for repair, is prohibited.

(j) Appendix A, Plumbing Permit Fee Schedule, contained in the code is deleted its entirety and appendices B—F contained in said code are hereby adopted.

(Code 1993, § 14-406; Ord. No. 2001-26, § 1, 1-7-2002; Ord. No. 2007-13, § 4(14-406), 11-5-2007; Ord. No. 2014-10, § 5(14-406), 5-5-2014)

Secs. 10-359—10-368. Reserved.

ARTICLE VII. BUILDING/DEVELOPMENT STANDARDS

Sec. 10-369. Definitions.

Sec. 10-370. Single-family residential—Building lines.

Sec. 10-371. Same—Lot requirements.

Sec. 10-372. Duplexes—Building lines.

Sec. 10-373. Same—Lot requirements.

Sec. 10-374. Townhomes—Building lines.

Sec. 10-375. Same—Lot requirements.

Sec. 10-376. Patio homes—Building lines.

Sec. 10-377. Same—Lot requirements.

Sec. 10-378. Multifamily developments; building lines.

Sec. 10-379. Commercial properties; building lines.

Secs. 10-380—10-389. Reserved.

Sec. 10-369. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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

Building line means an imaginary line, running parallel with applicable lot lines or street easements or roadway right-of-way lines, and beyond which no building or structure may be located other than fences, sidewalks, driveways, uncovered patios, swimming pools, or utility facilities placed by companies authorized to do so pursuant to franchise, license, or other authorization by the city or other governmental entity having jurisdiction thereover. Provided, however, no fence shall be authorized beyond a front building line and no swimming pool shall be authorized beyond a front or side building line, except as specifically authorized herein. In measuring a building line adjacent to a street easement or roadway right-of-way, the nearest boundary of the street easement or roadway right-of-way shall be used.

Multiple-family dwelling means a building designed and constructed to contain three or more independent dwelling units, which may share common passageways, vehicular access ways, and other essential facilities.

Street, arterial means a street designed as a principal traffic artery, more or less continuous across the city, intended to connect remote parts of the city, and used primarily for fast or heavy volume traffic.

Street, collector, means a street designed to carry traffic from local streets to the major system of arterial streets and highways.

Street, local, means a street used primarily for access to abutting properties and which is intended to serve traffic within a limited area.

Structure means anything constructed or erected which requires location on the ground or is attached to something having a location on the ground, whether above, below, or at grade.

(Code 1993, § 14-430; Ord. No. 2001-20, § 1, 1-7-2002; Ord. No. 2004-10, § 1, 11-15-2004)

Sec. 10-370. Single-family residential—Building lines.

(a) *Front.* The front building line shall not be less than 25 feet, except that where a lot faces an arterial street, the front building line shall be not less than 35 feet.

(b) *Side generally.* The side building line, to include eaves and appurtenances, shall not be less than five feet from the side property line.

(c) *Side, corner lots.* The building line on the side of a corner lot adjacent to a street shall not be less than 15 feet, except that where a lot sides on an arterial street, such building line shall not be less than 25 feet.

(d) *Rear generally.* The rear building line shall not be less than 15 feet, except where the rear property line abuts an alleyway, there shall be a minimum of 30 feet between the buildings abutting said alleyway; provided, however, if the alleyway is a 20-foot alleyway, then the minimum rear building line shall be not less than five feet, and if the alleyway is a 15-foot-wide alleyway, then the rear building line shall not be less than 7½ feet. In all cases, buildings must be constructed in relation to the rear property line so that there will at all times be 30 feet between the rear building lines.

(e) *Rear, on arterial street.* The rear building line where lots back on an arterial street shall not be less than 25 feet.

(f) *Encroachment by building eaves and air conditioning units.* Building eaves and air conditioning compressors may encroach not more than three feet beyond building lines other than front building lines on lots created by subdivision plats for single-family residential use duly approved by the city and recorded with the county clerk of Harris or Montgomery County, Texas, as applicable, on or before November 1, 1999.

(Code 1993, § 14-435; Ord. No. 2001-20, § 1, 1-7-2002)

Sec. 10-371. Same—Lot requirements.

(a) *Minimum width.* The minimum width of lots for single-family detached dwellings shall be 75 feet; radial lots shall have a minimum width of 75 feet at and for a distance of 30 feet behind the building line. No lot shall be created that has a front yard with less than 75 feet of frontage on the front street.

(b) *Minimum depth.* No single-family residential detached dwelling shall be constructed on a lot that is less than 120 feet in depth.

(c) *Minimum area.* No single-family residential detached dwelling shall be constructed on a lot that is less than 9,000 square feet in area.

(d) *Nonconforming lots.* Where a lawfully existing lot having less area, depth, or width than herein required existed in separate ownership on the effective date of the ordinance from which this article derives, the foregoing regulations relating to the size of such lot shall not prohibit the erection of a single-family dwelling thereon.

(Code 1993, § 14-436; Ord. No. 2001-20, § 1, 1-7-2002)

Sec. 10-372. Duplexes—Building lines.

(a) *Front.* The front building line shall not be less than 25 feet, except that where a lot faces an arterial street, the front building line shall not be less than 35 feet.

(b) *Side generally.* The side building line, to include eves and appurtenances, shall not be less than five feet.

(c) *Side, corner lots.* The building line on the side of a corner lot adjacent to a street shall not be less than 15 feet, except that where a lot sides on an arterial street, such building line shall not be less than 25 feet.

(d) *Rear generally.* The rear building line shall not be less than 15 feet, except where the rear property line abuts an alleyway, there shall be a minimum of 30 feet between the buildings abutting said alleyway; provided, however, if the alleyway is a 20-foot alleyway, then the minimum rear building line shall be not less than five feet, and if the alleyway is a 15-foot-wide alleyway, the rear building line shall not be less than 7½ feet. In all cases, buildings must be constructed in relation to the rear property line so that there will at all times be 30 feet between the rear building lines.

(e) *Rear, on arterial street.* The rear building line where a lot backs on an arterial street shall not be less than 25 feet.

(Code 1993, § 14-440; Ord. No. 2001-20, § 1, 1-7-2002)

Sec. 10-373. Same—Lot requirements.

(a) *Minimum width.* The minimum width of lots for duplexes shall be 85 feet. No lot shall be created that has a front yard with less than 85 feet of frontage on the front street.

(b) *Minimum depth.* No duplex dwelling shall be constructed on a lot that is less than 120 feet in depth.

(c) *Minimum area.* No duplex dwelling shall be constructed on a lot that is less than 10,200 square feet in area.

(Code 1993, § 14-441; Ord. No. 2001-20, § 1, 1-7-2002)

Sec. 10-374. Townhomes—Building lines.

(a) *Front.* The front building line shall not be less than 25 feet, except that where a lots faces on an arterial street, the front building line shall not be less than 35 feet.

(b) *Side, interior lots.* There shall be no side building line for a side of an interior lot which is adjacent to another townhome.

(c) *Side, corner lots.* The building line on the side of a corner lot adjacent to a street shall not be less than 15 feet, except that where a lot sides on an arterial street, such building line shall not be less than 25 feet.

(d) *Side, generally.* The side building line other than when adjacent to an interior lot line, to include eves and appurtenances, shall not be less than five feet.

(e) *Rear, generally.* The rear building line shall not be less than 15 feet, except where the rear property line abuts an alleyway, there shall be a minimum of 30 feet between the buildings abutting said alleyway; provided, however, if the alleyway is a 20-foot alleyway, then the minimum rear building line shall be not less than five feet, and if the alleyway is a 15-foot-wide alleyway, the rear building line shall not be less than 7½ feet. In all cases buildings must be constructed in relation to the rear property line so that there will at all times be 30 feet between the rear building lines.

(f) *Rear, on arterial street.* The rear building line where a lot backs on an arterial street shall not be less than 25 feet.

(Code 1993, § 14-450; Ord. No. 2001-20, § 1, 1-7-2002)

Sec. 10-375. Same—Lot requirements.

(a) *Minimum width.* The minimum width for townhome lots shall be 30 feet.

(b) *Minimum depth.* The minimum depth for townhome lots shall be 120 feet.

(c) *Minimum area.* No townhome shall be constructed on a lot that is less than 3,600 square feet in lot area.

(d) *Minimum height.* No townhome shall be constructed with more than two stories, or greater than 25 feet in total height, including gables.

(Code 1993, § 14-451; Ord. No. 2001-20, § 1, 1-7-2002)

Sec. 10-376. Patio homes—Building lines.

(a) *Front.* The front building line shall not be less than 25 feet, except that where a lot faces on an arterial street, the front building line shall not be less than 35 feet.

(b) *Side, interior lots.* The side building line, to include eaves and appurtenances, shall not be less than five feet.

(c) *Side, corner lots.* The building line on the side of a corner lot adjacent to a street shall not be less than 15 feet, except that where a lot sides on an arterial street, the building line shall not be less than 25 feet.

(d) *Rear generally.* The rear building line shall not be less than 15 feet, except where the rear property line abuts an alleyway, there shall be a minimum of 30 feet between the buildings abutting said

alleyway, provided that if the alleyway is a 20-foot alleyway, then the minimum rear building line shall be not less than five feet, and if the alleyway is a 15-foot-wide alleyway, then the rear building line shall not be less than 7½ feet. In all cases buildings must be constructed in relation to the rear property line so that there will at all times be 30 feet between the rear building lines.

(e) *Rear, on arterial street.* The rear building line where a lot back on an arterial street shall not be less than 25 feet.

(Code 1993, § 14-460; Ord. No. 2001-20, § 1, 1-7-2002)

Sec. 10-377. Same—Lot requirements.

(a) *Minimum width.* The minimum width of lots for patio homes shall be 40 feet.

(b) *Minimum depth.* The minimum depth of lots for patio homes shall be 100 feet.

(c) *Minimum area.* No patio home shall be constructed on a lot which contains less than 4,000 square feet in lot area.

(Code 1993, § 14-461; Ord. No. 2001-20, § 1, 1-7-2002)

Sec. 10-378. Multifamily developments; building lines.

The following minimum building lines shall be required for lots or tracts containing multiple-family dwelling buildings, measured from the applicable property line; provided however if the lot is encumbered with a street easement or roadway right-of-way, such building line shall be measured from the boundary line of such street easement or roadway right-of-way nearest the center of the lot.

(1) *Front yard.* The front yard building line shall not be less than 25 feet, except that where a front yard faces an arterial street, the front building line shall not be less than 35 feet.

(2) *Side yard, interior.* The interior side yard building line shall be not less than five feet, except that where an interior side lot line is adjacent to property restricted by a duly recorded subdivision plat to, or primarily used for, single-family residential purposes, such interior side building line shall be not less than 25 feet.

(3) *Side yard, street.* The side building line adjacent to a street shall be not less than 15 feet, except that where the side yard is adjacent to an arterial street such building line shall be not less than 25 feet.

(4) *Rear yard; interior; alleyways.* The rear building line shall be not less than 15 feet. Provided, however, where the rear property line abuts an alleyway, there shall be a minimum of 30 feet between the buildings abutting said alleyway. Provided further, if the rear property line abuts an alleyway having a width of 20 feet or less but more than 15 feet, then the rear building line shall be not less than five feet; and if the rear property line abuts an alleyway having a width of 15 feet or less, then the rear building line shall be not less than 7½ feet. In all cases, buildings shall be constructed in relation to the rear property line so that there shall at all times be not less than 30 feet between the rear building lines.

(5) *Rear yard, major street.* A rear building line adjacent to an arterial street shall be not less than 25 feet.

(6) *Zero lot line exception.* Notwithstanding the foregoing, except where an interior side or rear lot line is adjacent to restricted by a duly recorded subdivision plat to, or primarily used for, single-family residential purposes, there shall be no required interior side rear building line if the wall adjoining such interior side or rear lot line, as applicable, is constructed with materials giving it a four-hour firewall rating.

(Code 1993, § 14-474; Ord. No. 2001-20, § 1, 1-7-2002)

Sec. 10-379. Commercial properties; building lines.

(a) *Front.* The front building line shall not be less than 25 feet, except that where a lot faces an arterial street, the front building line shall not be less than 35 feet.

(b) *Side, corner lots.* The building line on the side of a corner lot adjacent to a street shall not be less than 15 feet, except that where a lot sides on an arterial street, the building lines shall not be less than 25 feet.

(c) *Rear generally.* The rear building line shall not be less than 15 feet, except where the rear property line abuts an alleyway, there shall be a minimum of 30 feet, between the buildings abutting said alleyway, provided that if the alleyway is a 20-foot-wide alleyway, then the minimum rear building line shall be not less than five feet, and if the alleyway is a 15-foot-wide alleyway, then the rear building line shall not be less than 7½ feet. In all cases buildings must be constructed in relation to the rear property line so that there will at all times be 30 feet between the rear building lines.

(d) *Rear, arterial street.* The rear building line where a lot backs on an arterial street shall not be less than 25 feet.

(e) *Side, interior.* The side building lines shall not be less than five feet.

(f) *Zero lot line.* If the wall adjoining the building line is constructed with materials giving it a four-hour firewall rating, then such building line may be zero, unless such wall abuts either an existing single-family residence or a platted single-family residential lot as set out in subsection (g) of this section.

(g) *Adjacent to single-family use.* No commercial building line shall be less than 25 feet on a side that abuts either an existing single-family residence, or a platted single-family residential lot, which does not have an existing place of business located on such single-family residential lot.

(h) *Platted lots defined.* A platted lot is a distinct separate tract of land which is identified by a tract or lot symbol on a subdivision plat which has been approved by the city and properly recorded with the county clerk's office.

(i) *Exceptions for certain retail shopping center outbuildings fronting State Highway 249.* Notwithstanding any other provision of this section to the contrary, the building line for retail outbuildings adjacent to State Highway 249 and State Highway 249 bypass shall be ten feet if:

(1) The retail outbuilding is within a shopping center development (a development comprised of retail businesses which share common parking and pedestrian areas and facilities for their clientele) which contains not less than one and one-fourth acres of land and which has not less than 240 feet of frontage on said State Highway 249 and State Highway 249 bypass;

(2) The retail outbuilding contains not more than 100 square feet of floor area;

(3) The retail outbuilding is located so as not to create a hazard to vehicular or pedestrian traffic on the shopping center site, the adjacent State Highway 249 and State Highway 249 bypass, or any other adjacent public or private street or property; limit spacing of said structures to no greater than one per 300 feet;

(4) The retail outbuilding is located not less than 50 feet from any paved portion of State Highway 249 and State Highway 249 bypass, whether main lane or access road; and

(5) The retail outbuilding is located so as to be a minimum of 300 feet from the closest retail outbuilding along either side of State Highway 249 and State Highway 249 bypass, measured in a straight line from the center fronts of each retail outbuilding.

(Code 1993, § 14-486; Ord. No. 2001-20, § 1, 1-7-2002)

Secs. 10-380—10-389. Reserved.

ARTICLE VIII. FLOOD DAMAGE PREVENTION [3]

DIVISION 1. - GENERALLY

DIVISION 2. - ADMINISTRATION

DIVISION 3. - PROVISIONS FOR FLOOD HAZARD REDUCTION

FOOTNOTE(S):

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State Law reference— Soil and water conservation, V.T.C.A., Agriculture Code ch. 201; emergency management, V.T.C.A., Government Code ch. 418; city-county water control, V.T.C.A., Local Government Code §§ 411.002, 411.003; Flood Control and Insurance Act, V.T.C.A., Water Code § 16.311 et seq.; local rules, V.T.C.A., Water Code § 16.318. (Back)

DIVISION 1. GENERALLY

Sec. 10-390. Statutory authorization.

Sec. 10-391. Findings of fact.

Sec. 10-392. Statement of purpose.

Sec. 10-393. Methods of reducing flood losses.

Sec. 10-394. Definitions.

Sec. 10-395. General provisions.

Secs. 10-396—10-418. Reserved.

Sec. 10-390. Statutory authorization.

The legislature of the state has in the Flood Control Insurance Act and Texas Water Code (including V.T.C.A., Water Code § 16.315) delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses.

(Ord. No. 2010-16, § 1(38-1), 10-4-2010)

Sec. 10-391. Findings of fact.

(a) The flood hazard areas of the city are subject to periodic inundation, which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(b) These flood losses are created by the cumulative effect of obstructions in floodplains, which increase flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, or otherwise protected from flood damage.

(Ord. No. 2007-07, § 1(38-2), 11-19-2007; Ord. No. 2010-16, § 1(38-2), 10-4-2010)

Sec. 10-392. Statement of purpose.

It is the purpose of this article to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

(1) Protect human life and health;

(2) Minimize expenditure of public money for costly flood control projects;

(3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(4) Minimize prolonged business interruptions;

(5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;

(6) Help maintain a stable tax base by providing for the sound use and development of the flood-prone area in such a manner as to minimize future flood blight areas;

(7) Ensure that potential buyers are notified that property is in a flood-prone area; and

(8) Ensure that those who occupy the flood-prone area assume responsibility for their actions.

(Ord. No. 2007-07, § 1(38-3), 11-19-2007; Ord. No. 2010-16, § 1(38-3), 10-4-2010)

Sec. 10-393. Methods of reducing flood losses.

In order to accomplish its purposes, this article uses the following methods:

(1) Restrict or prohibit uses that are dangerous to health, safety, or property in times of flood, or cause excessive increases in flood heights or velocities;

(2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

(3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;

(4) Control filling, grading, dredging, and other development which may increase flood damage; and

(5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or may increase flood hazards in other lands.

(Ord. No. 2007-07, § 1(38-4), 11-19-2007; Ord. No. 2010-16, § 1(38-4), 10-4-2010)

Sec. 10-394. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory structure means a structure which is located on the same parcel of property as the principal structure, the use of which is incidental to the use of the principal structure, and which is not to

be used for human habitation. Types of accessory structures include, but are not limited to, detached garages, boathouses, small pole barns and storage sheds.

Addition means any alteration to an existing structure that increases its footprint.

Appeal means a request for a review of the interpretation of any provision of this chapter or a request for a variance.

Area of future conditions flood hazard means the land area that would be inundated by the one percent annual chance (100-year) flood based on future conditions hydrology.

Area of shallow flooding means a designated AO or AH Zone on the flood insurance rate map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. AO is characterized as sheet flow and AH indicates ponding.

Area of special flood hazard is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the flood hazard boundary map (FHBM). After detailed rate making has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zone A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE or V.

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year.

Base flood elevation (BFE) means the elevation shown on the flood insurance rate map (FIRM) and found in the accompanying flood insurance study (FIS) for Zone A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a one percent chance of equaling or exceeding that level in any given year; also called the "base flood."

Basement means any area of the building having its floor subgrade (below ground level) on all sides.

Breakaway wall means open wood lattice, insect screening or any other suitable building material approved by the city engineer which is not part of the structural support of the associated structure and which is intended to collapse under wind and water loads without causing collapse, displacement or other structural damage to the elevated portion of the structure or damage to the structural integrity of the structure on which breakaway walls are used.

Construction site permit means a permit issued to a developer by the city for site work and/or construction of water, sanitary, or natural gas mains.

Conveyance means the flow of water during the base flood with a velocity that is greater than one foot per second or a depth that is greater than one foot.

Crawlspace is an enclosed area below the lowest floor of a building formed when the foundation walls are used to elevate the lowest floor above the base flood elevation.

Critical facilities includes facilities that materially affect the public health and welfare. Such facilities include, but are not be limited to:

(1) Hospitals, nursing homes, and housing likely to contain occupants who may not be sufficiently mobile to avoid death or injury during a flood;

(2) Police stations, fire stations, vehicle and equipment storage facilities, and emergency operations centers that are needed for flood response activities before, during, and after a flood;

(3) Public and private utility facilities that are vital to maintaining or restoring normal services to flooded areas before, during and after a flood; and

(4) Structures or facilities that produce, use, treat, store, or dispose of highly volatile, flammable, explosive, toxic, and/or water-reactive materials.

Critical feature means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

Development means any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, clearing, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. Fences or fence-type walls located within the floodplain are included within this definition.

Development permit means a permit issued under the provisions of this article for any development of a site located within a flood-prone area. The term "development permit" shall also include a permit for the placement of a recreational vehicle for more than 180 days in Zone AE.

Elevated building means, for insurance purposes, a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

Elevation certificate means a statement from an engineer or surveyor licensed by the state on the most current FEMA form certifying that the lowest floor of the structure has been elevated at least as high as required by this article.

Existing construction means, for the purposes of determining flood insurance rates, structures for which the start of construction commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. The term "existing construction" may also be referred to as "existing structures."

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) and is completed before the effective date of the floodplain management regulations adopted by the city.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Fill means any material that is placed in an area and increases the elevation of that area or displaces water volume.

Flood or *flooding* means a general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters; and/or

(2) The unusual and rapid accumulation or runoff of surface waters from any source.

Flood elevation study means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

Flood Insurance Rate Map (FIRM) means an official map of a community, on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

Flood insurance study (FIS). See *Flood elevation study.*

Flood protection system means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a special flood hazard and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

Floodplain or *flood-prone area* means any land area, including the special flood hazard area, susceptible to being inundated by water from any source (see *Flooding*).

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage, including, but not limited, to emergency preparedness plans, flood control works and floodplain management regulations.

Floodplain management regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term "floodplain management regulations" describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodproofing certificate means a certificate issued by a registered professional engineer licensed in the state which states that he has developed and/or reviewed the structural design, specifications, and plans for the construction of the structure or improvements covered by the certificate and that the design and methods of construction are in accordance with accepted standards of practice for meeting the following requirements:

(1) The floodproofing methods used are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the base flood; and

(2) Together with attendant utility and sanitary facilities, the structures are designed so that below the base flood level the structures are watertight with walls impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

Floodway. See *Regulatory floodway.*

Functionally dependent use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term "functionally dependent use" includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Highest adjacent grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure means any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

(4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

a. By an approved state program as determined by the Secretary of the Interior; or

b. Directly by the Secretary of the Interior in states without approved programs.

Levee means a manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

Levee system means a flood protection system which consists of a levee, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this article found at section 10-446(d).

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a recreational vehicle.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean sea level means, for purposes of the national flood insurance program, the North American Vertical Datum (NAVD) of 1988 or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.

New construction means, for the purpose of determining insurance rates, structures for which the start of construction commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, the term "new construction" means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by the city and includes any subsequent improvements to such structures.

New development means the initial construction of a structure.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the city.

Recreational vehicle means a vehicle which is:

(1) Built on a single chassis;

(2) 400 square feet or less when measured at the largest horizontal projections;

(3) Designed to be self-propelled or permanently towable by a light-duty truck; and

(4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Repetitive loss means flood-related damages sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before damage occurred.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Special flood hazard area or special area means the land in the floodplain within the city that is subject to a one percent or greater chance of flooding in any given year and is designated on the FIRM as Zone AE.

Start of construction, for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348), includes substantial improvement and means the date the

building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means, for floodplain management purposes, a walled and roofed building including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement.

(1) The term "substantial improvement" means any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

a. Before "start of construction" of the improvement or repair; or

b. If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, the term "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

(2) The term "substantial improvement" includes repetitive loss, as defined in this section; substantial damage, regardless of the actual repair work performed, but does not include either:

a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

b. Any alteration of a historical structure provided that the alteration will not preclude the structure's continued designation as a historical structure.

Utilities means all building utilities including, but not limited to, electrical, heating, ductwork, ventilating, plumbing, air conditioning equipment, and any other service facilities.

Variance means a grant of relief from the requirements of this article which permits construction in a manner that would otherwise be prohibited by this chapter. (See section 10-423 and section 60.6 of the National Flood Insurance Program regulations.)

Violation means the failure of a structure or other development to be fully compliant with the city's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this article is presumed to be in violation until such time as that documentation is provided.

Water surface elevation means the height, in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

(Ord. No. 2007-07, § 1(38-5), 11-19-2007; Ord. No. 2010-16, § 1(38-5), 10-4-2010)

State law reference— Definitions relating to Flood Control and Insurance Act, V.T.C.A., Water Code § 16.313.

Sec. 10-395. General provisions.

(a) *Lands to which this chapter applies.* This article shall apply to all flood-prone areas within the jurisdiction of the city.

(b) *Basis for establishing flood-prone areas.* The special flood hazard area identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled, "The Flood Insurance Study for Harris County, Texas," dated June 18, 2007, with accompanying flood insurance rate maps, dated June 18, 2007, and any revisions thereto, are hereby adopted by reference and declared to be a part of this article. In addition to the special flood hazard area, the city engineer, with approval of the city council by resolution, may designate by maps certain other areas to be flood-prone based on flood history or other characteristics that indicate a potential for future flooding events.

(c) *Compliance.* No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this article and other applicable regulations.

(d) *Penalties for noncompliance.* Any person who shall intentionally, knowingly, recklessly, or with criminal negligence, violate any provision of this article shall be deemed guilty of a misdemeanor.

(e) *Abrogation and greater restrictions.* This article is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this article and another chapter, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(f) *Interpretation.* In the interpretation and application of this article, all provisions shall be:

(1) Considered as minimum requirements;

(2) Liberally construed in favor of the city council; and

(3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(g) *Warning and disclaimer of liability.* The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This article does not imply that land outside the flood-prone areas or uses permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of the city, any officer or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made hereunder.

(Ord. No. 2007-07, § 1(38-6), 11-19-2007; Ord. No. 2010-16, § 1(38-6), 10-4-2010)

Secs. 10-396—10-418. Reserved.

DIVISION 2. ADMINISTRATION

Sec. 10-419. Establishment of development permit.

Sec. 10-420. Designation of the floodplain administrator.

Sec. 10-421. Duties and responsibilities of the floodplain administrator.

Sec. 10-422. Plat approval; issuance.

Sec. 10-423. Variance procedures.

Secs. 10-424—10-444. Reserved.

Sec. 10-419. Establishment of development permit.

(a) *Generally.* No building permit, development permit, construction site permit or other permit required for a structure or development shall be issued, and no plat shall be approved, unless the applicant demonstrates that the permit or plat meets the applicable requirements of this division, or unless a variance, excepting such structure or development from the provisions of this chapter, is granted under the terms of this division.

(b) *Development permit required.* A development permit shall be obtained before construction or development begins within any special flood hazard area established in section 10-395(b) or within any other flood-prone area designated by the city engineer. The permit shall be for all structures including manufactured homes, and for all development including fill and other activities.

(c) *Application for development permit.* Application for a development permit shall be made on forms furnished by the department of public works and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question, existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

(1) The existing topography and the location, dimensions, and elevation of any proposed alterations;

(2) Existing and proposed structures;

(3) The location of the proposed alterations in relation to special flood hazard areas;

(4) Elevation, in relation to mean sea level of the lowest floor (including basement) of all new and substantially improved structures;

(5) Elevation in relation to mean sea level to which any nonresidential structures will be or have been floodproofed;

(6) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in section 10-446(b);

(7) If the site is adjacent to a watercourse or drainage channel, the description of how that watercourse will be impacted as a result of proposed development;

(8) Base flood elevations from effective FIRM data for all structures and substantial improvements; and

(9) Each sheet in the plans on which elevations are marked shall include the vertical datum and adjustment, consistent with the effective FIRM, along with the FIRM benchmark and site benchmark used for vertical control.

(d) *Elevation certificate.* The permit applicant for development of a structure is required to provide the city engineer with a signed FEMA elevation certificate at three stages during the application and construction process:

(1) When the permit application is submitted;

(2) Prior to forming/pouring the lowest floor of the structure; and

(3) Prior to receiving the final inspection (photographs required on final certificate).

(e) *Engineering analyses.* Based on the nature of the proposed development, the city engineer may require the permit applicant to submit one or more of the following studies:

(1) Fill mitigation analysis;

(2) Hydraulic impact analysis;

(3) Hydrologic impact (overland flow path and ponding) analysis; and/or

(4) Any other technical analysis deemed necessary by the city engineer in order to protect the community from the impacts of potential flooding events.

Permit applicants are encouraged to discuss proposed development plans with the city engineer prior to submitting an application in order to determine which analyses may be required to support the application. Technical analyses shall be certified by a professional engineer licensed in the state.

(f) *Permit approval or denial.* Approval or denial of a development permit by the city engineer shall be based on all of the provisions of this division and the following relevant factors:

(1) The danger to life and property due to flooding or erosion damage;

(2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(3) The danger that materials may be swept onto other lands to the injury of others;

(4) The compatibility of the proposed use with existing and anticipated development;

(5) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(6) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;

(7) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;

(8) The necessity to the facility of a waterfront location, where applicable; and

(9) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.

(Ord. No. 2007-07, § 1(38-26), 11-19-2007; Ord. No. 2010-16, § 1(38-26), 10-4-2010)

Sec. 10-420. Designation of the floodplain administrator.

The city engineer is hereby appointed floodplain administrator to administer and implement the provisions of this article and other appropriate sections of 44 CFR (Emergency Management and Assistance-National Flood Insurance Program Regulations) pertaining to floodplain management by granting or denying development permit applications in accordance with its provisions.

(Ord. No. 2007-07, § 1(38-27), 11-19-2007; Ord. No. 2010-16, § 1(38-27), 10-4-2010)

Sec. 10-421. Duties and responsibilities of the floodplain administrator.

Duties and responsibilities of the floodplain administrator shall include, but not be limited to:

(1) *Permit review.*

a. Review all development permit applications to determine that the requirements of this article have been satisfied.

b. Review all development permit applications to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies (including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1344) from which prior approval is required.

c. Review all development permit applications to determine if the proposed development is located in the regulatory floodway. If located in the regulatory floodway, assure that the encroachment provisions of section 10-448 are met.

d. Review all development permit applications to ensure that the proposed building site projects, including the placement of manufactured homes, will be reasonably safe from flooding.

(2) *Use of other base flood data (in A Zones).* When base flood elevation data has not been provided in accordance with section 10-395(b), obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer sections 10-446, and 10-448, floodways.

(3) *Information to be obtained and maintained.*

a. Where base flood elevation data is provided through the flood insurance study, FIRM, or required as in subsection (2) of this section, obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.

b. For all new or substantially improved floodproofed structures where base flood elevation data is provided through the flood insurance study, FIRM, or as required in subsection (2) of this section:

1. Verify and record the actual elevation (in relation to mean sea level); and

2. Maintain the floodproofing certifications required in section 10-419(c)(6).

c. Maintain for public inspection all records pertaining to the provisions of this article.

(4) *Alteration of watercourses.*

a. Notify, in riverine situations, adjacent communities and the state coordinating agency which is the Texas Water Development Board (TWDB) and also the state commission on environmental quality prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

b. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

(5) *FIRM boundaries.*

a. *Interpretation.* Make interpretations, where needed, as to exact location of the boundaries of the special flood hazard area (i.e., where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in section 10-423

b. *Revision; encroachments.* Under the provisions of 44 CFR 65.12 of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE and AH on a community's FIRM which increases the water surface elevation of the base flood by more than one foot, provided that the community first completes all of the provisions required by said section 65.12.

(Ord. No. 2007-07, § 1(38-28), 11-19-2007; Ord. No. 2010-16, § 1(38-28), 10-4-2010)

Sec. 10-422. Plat approval; issuance.

(a) Any person who is required or elects to obtain a plat shall also comply with the provisions of this article, if applicable.

(b) When a person files an application for approval of a plat, the approval of the plat is subject to the approval of a drainage plan for the property that is the subject of the plat application if the property is

located in whole or in part in a flood-prone area within the city. The drainage plan shall include the base flood elevation data for the property certified as true and correct on the face of the drainage plan by a registered professional engineer licensed in the state.

(c) The city engineer shall review the drainage plan and determine whether the development will be reasonably safe from flooding and whether such proposed development is:

(1) Consistent with the need to minimize flood damage within the flood-prone area;

(2) To be constructed so that all public utility facilities including, but not limited to, sanitary sewer, gas, water and electrical systems are located and constructed so as to minimize flood damage from the base flood;

(3) To be constructed so that drainage is provided to reduce exposure of such development to flood hazards; and

(4) Would comply with the applicable requirements of division 3 of this article.

(d) If the proposed development satisfies the criteria in subsection (c) of this section, the city engineer shall approve the drainage plan and shall so notify the city planning and zoning commission in writing.

(e) The city planning and zoning commission shall not approve a final plat until the city engineer has approved the drainage plan for that site.

(Ord. No. 2007-07, § 1(38-29), 11-19-2007; Ord. No. 2010-16, § 1(38-29), 10-4-2010)

Sec. 10-423. Variance procedures.

(a) *Appeal board.*

(1) The appeals board, as established by the city council, shall hear and decide appeals and requests for variances from the requirements of this article.

(2) The appeals board shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the enforcement or administration of this article.

(3) In passing upon such applications, the appeals board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this article, and:

a. The danger that materials may be swept onto other lands to the injury of others;

b. The danger to life and property due to flooding or erosion damage;

c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

d. The importance of the services provided by the proposed facility to the community;

e. The necessity to the facility of a waterfront location, where applicable;

f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

g. The compatibility of the proposed use with existing and anticipated development;

h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

i. The safety of access to the property in times of flood for ordinary and emergency vehicles;

j. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(4) Upon consideration of the factors of subsection (a)(3) of this section and the purposes of this article, the appeals board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this article.

(5) The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

(b) *Conditions for variances.*

(1) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items in subsection (a)(3)a. thru k. of this section have been fully considered. As the lot size increases, the technical justification required for issuing the variance increases.

(2) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the state inventory of historic places, without regard to the procedures set forth in this section.

(3) Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.

(4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(5) Variances shall only be issued upon:

a. A showing of good and sufficient cause;

b. A determination that failure to grant the variance would result in exceptional hardship to the applicant;

c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in subsection (a)(3) of this section, or conflict with existing local laws or ordinances.

(6) Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece or property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.

(7) Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except subsection (b)(1) of this section, and otherwise complies with sections 10-445(a) and (b) of the general standards.

(8) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:

a. The criteria outlined in subsection (b) of this section are met; and

b. The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(9) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the

cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(c) *Appeal of decision.* All decisions of the appeals board are final and binding and may not be appealed to the city council. However, any person aggrieved by a decision of the appeals board may present a verified petition that states that the decision of board is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition must be presented to a court of appropriate jurisdiction within ten calendar days after the date the board's decision is filed in the office of the secretary of the board.

(d) *Notice of decision.* The secretary shall give notice of the decision and the right of appeal of the decision to each party personally, by mail or by email not later than the third day after the date of the decision.

(Ord. No. 2007-07, § 1(38-30), 11-19-2007; Ord. No. 2010-16, § 1(38-30), 10-4-2010)

Secs. 10-424—10-444. Reserved.

DIVISION 3. PROVISIONS FOR FLOOD HAZARD REDUCTION

Sec. 10-445. General standards.

Sec. 10-446. Specific standards.

Sec. 10-447. Before regulatory floodway.

Sec. 10-448. Regulatory floodway.

Sec. 10-449. Standards for shallow flooding areas (AO/AH Zones).

Secs. 10-450—10-466. Reserved.

Sec. 10-445. General standards.

In the flood-prone area, the following standards are required:

(1) *Anchoring.*

a. All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads including the effects of buoyancy.

b. All manufactured homes must likewise be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrostatic and hydrodynamic loads including the effects of buoyancy, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors. (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques.)

(2) *Site drainage.* Drainage pathways are required around structures to guide floodwaters around such structures.

(3) *Construction materials and methods.*

a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

c. All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(4) *Utilities.*

a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;

b. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters; and

c. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(5) *Standards for subdivisions.*

a. All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall be consistent with the need to minimize flood damage;

b. All proposals for the development of subdivisions, including the placement of manufactured home parks and subdivisions, shall meet floodplain development permit requirements of this article;

c. All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage;

d. All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall have adequate drainage provided to reduce exposure to flood damage; and

e. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or five acres (whichever is less).

(6) *Review of building permits.* Where elevation data is not available either through the flood insurance study, FIRM, or from another authoritative source (section 10-421(2)), applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above the highest adjacent grade in these zones may result in higher insurance rates.

(7) *Mitigation of fill.* Fill in the flood-prone area must be mitigated to ensure that the storage volume of such area is not diminished by development. A development permit applicant must submit a fill mitigation analysis demonstrating that the proposed development, if constructed, will not result in a decrease in storage volume within the flood-prone area.

(Ord. No. 2007-07, § 1(38-41), 11-19-2007; Ord. No. 2010-16, § 1(38-41), 10-4-2010)

Sec. 10-446. Specific standards.

(a) *Residential construction.* New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated at least 1.5 feet above the base flood elevation. A registered professional engineer or land surveyor shall submit a FEMA elevation certificate to the floodplain administrator that verifies that the standard of this subsection is satisfied.

(b) *Nonresidential construction.*

(1) New construction and substantial improvements of any commercial, industrial, or other nonresidential structure shall either meet the specific standards for residential construction, or, together with attendant utility and sanitary facilities, shall:

a. Be floodproofed to at least 1.5 feet above the base flood level so that the structure is watertight with walls substantially impermeable to the passage of water;

b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the official as set forth in section 10-421(3)b.;

(2) Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in subsection (d) of this section;

(3) Applicants floodproofing nonresidential buildings are advised that flood insurance premiums may be based on rates that are greater than those established for buildings with the first floor elevated to the same level.

(c) *Critical facility.* Construction of new critical facilities shall be, to the extent possible, located outside the limits of the flood-prone area. Construction of new critical facilities shall be permissible within the flood-prone area if no feasible alternative site is available. Critical facilities constructed within the flood-prone area shall have the lowest floor elevated, or the structure shall be floodproofed to an elevation at least 1.5 feet above the elevation of the 500-year (0.2 percent probability) flood event or three feet above the highest adjacent grade of the building site if flood elevation data is not available. Additionally, floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access to and from the critical facility must be assured under all circumstances. The city engineer will review and approve all plans for access routes for critical facilities located in the flood-prone area.

(d) *Enclosures.* Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a professional engineer licensed in the state or must meet or exceed the following minimum criteria:

(1) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

(2) The bottom of all openings shall be no higher than one foot above grade.

(3) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(4) Below-grade crawlspaces shall be designed in accordance with FEMA Technical Bulletin 11-01, "Crawlspace Construction for Buildings Located in Special Flood Hazard Areas," FIA-TB-11, or revisions to this document.

(5) Below-grade crawlspaces are prohibited at sites where the velocity of floodwaters exceeds five feet per second.

(6) All building utility systems within the crawlspace shall be elevated above base flood elevation or be designed so that floodwaters cannot enter or accumulate within the system component during flood conditions.

(7) The interior of a crawlspace below the base flood elevation must not be more than two feet below the lowest adjacent exterior grade (LAG) and the height of the below-grade crawlspace,

measured from the interior grade of the crawlspace to the top of the crawlspace foundation must not exceed four feet at any point.

(8) Below-grade crawlspaces constructed in accordance with the requirements listed in this subsection (d) shall not be considered basements. However, applicants who construct buildings that have below-grade crawlspaces are hereby advised that such buildings may have higher flood insurance premiums than buildings that have crawlspaces with interior elevations at or above the lowest adjacent grade. In addition, the building design must include adequate provision for drainage from the crawlspace following a flooding event.

(e) *Manufactured homes.*

(1) All manufactured homes to be placed or substantially improved on sites:

a. Outside of a manufactured home park or subdivision;

b. In a new manufactured home park or subdivision;

c. In an expansion to an existing manufactured home park or subdivision; or

d. In an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood;

shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated at 1.5 feet above the base flood elevation and be securely anchored to an adequately designed foundation system to resist flotation, collapse and lateral movement.

(2) Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within the flood-prone area that are not subject to the above manufactured home provisions shall be elevated so that either:

a. The lowest floor of the manufactured home is elevated at 1.5 feet above the base flood elevation; or

b. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately designed foundation system to resist flotation, collapse, and lateral movement.

(f) *Recreational vehicles.* Recreational vehicles placed on sites are required to either:

(1) Be on the site for fewer than 180 consecutive days;

(2) Be fully licensed and ready for highway use, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions; or

(3) Meet the requirements of subsection (e) of this section and the elevation and anchoring requirements for manufactured homes.

(g) *Accessory structures.* Accessory structures shall be constructed and placed on the building site so as to offer minimum resistance to the flow of floodwaters; shall be anchored to prevent floatation which may result in damage to other structures; and service utilities such as electrical and heating equipment shall be elevated or floodproofed.

(h) *Breakaway walls.* Breakaway walls must be designed so that if carried downstream they will not cause damage to any other structure. Breakaway walls must have a design safe loading resistance of not less than ten and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by city or state codes) may be permitted only if a registered professional engineer certifies that the proposed design meets the following conditions:

(1) Wall collapse shall result from a water load less than that which would occur during the base flood; and

(2) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Maximum wind and water loading values to be used in this determination shall each have a one percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval).

(Ord. No. 2007-07, § 1(38-42), 11-19-2007; Ord. No. 2010-16, § 1(38-42), 10-4-2010)

Sec. 10-447. Before regulatory floodway.

In areas where a regulatory floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the city's FIRM unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(Ord. No. 2007-07, § 1(38-43), 11-19-2007; Ord. No. 2010-16, § 1(38-43), 10-4-2010)

Sec. 10-448. Regulatory floodway.

The regulatory floodway is the designated area within Zone AE of the special flood hazard area established in section 10-395(b). Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

(1) Prohibit new private development in the regulatory floodway. Improvements to existing structures which do not propose an expansion of the existing footprint of such structures may be permitted if all other requirements of this section are fulfilled.

(2) Concerning public development, prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional civil engineer, licensed by the state, is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge. This requirement may be satisfied by a conditional letter of map revision issued by the Federal Emergency Management Agency.

(3) Require that the bottom of the lowest horizontal member supporting the proposed structure, including bridges, be elevated at least 18 inches above the base flood elevation.

(4) If subsections (2) and (3) of this section are satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this division.

(Ord. No. 2007-07, § 1(38-44), 11-19-2007; Ord. No. 2010-16, § 1(38-44), 10-4-2010)

Sec. 10-449. Standards for shallow flooding areas (AO/AH Zones).

Located within the special flood hazard area established in section 10-395(b) are areas designated as shallow flooding. These areas have special flood hazards associated with flood depths of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow. In these areas, the following provisions apply:

(1) New construction and substantial improvements of residential structures and manufactured homes within AO/AH Zones shall have the lowest floor (including basement) elevated above the highest grade adjacent to the building, 1.5 feet or more above the depth number specified on the FIRM (at least two feet if no depth number is specified).

(2) New construction and substantial improvements of nonresidential structures within AO/AH Zones shall either:

a. Have the lowest floor (including basement) elevated above the highest adjacent grade of the building site, 1.5 feet or more above the depth number specified on the FIRM (at least two feet, if no depth number is specified); or

b. Together with attendant utility and sanitary facilities, be completely floodproofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. If this method is used, compliance shall be certified by a registered professional engineer or architect as in section 10-446(b)(3).

(3) Require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.

(4) Recreational vehicles placed on sites within AO/AH Zones on the community's FIRM must either:

a. Be on the site for fewer than 180 consecutive days;

b. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or

c. Meet the requirements of this section and the elevation and anchoring requirements for manufactured homes.

(Ord. No. 2007-07, § 1(38-45), 11-19-2007; Ord. No. 2010-16, § 1(38-45), 10-4-2010)

Secs. 10-450—10-466. Reserved.

ARTICLE IX. SUBSTANDARD BUILDINGS

Sec. 10-467. Building standards commission.

Sec. 10-468. Enforcement of orders.

Sec. 10-469. Determination.

Sec. 10-470. Nuisance declared.

Sec. 10-471. Inspectors.

Sec. 10-472. Criteria for determination of repair, vacation or demolition.

Sec. 10-473. Procedure for condemnation.

Sec. 10-474. Emergency measures for condemnation.

Sec. 10-475. Notice of emergency measures.

Sec. 10-476. Lien against property.

Sec. 10-467. Building standards commission.

(a) The building standards commission is created, to be composed of five members. The members of the city planning commission shall serve in the role of the building standards commission in addition to their duties as a planning and zoning commission. When fulfilling their duties as the city's building

standards commission, the commission shall give public notice through its posted agenda, and such other notice as may be required, in a manner intended to notify the public of the role and duties the commission is fulfilling.

(b) In addition to the five members of the building standards commission, the city fire marshal and the building inspector shall be ex officio, nonvoting members of the commission. Any employee of the city designated by the city manager shall be authorized to act as substitute for the respective superior of their respective department or division as an ex officio member of the building standards commission.

(Code 1978, § 11-36; Code 1993, § 14-341; Ord. No. 92-04, § 1.0, 5-5-1992)

Sec. 10-468. Enforcement of orders.

It shall be the duty of the city council to enforce the orders of the building standards commission or orders of the city council, if an appeal is made, which orders are to be enforced by the council filing action in the appropriate court of the state when so authorized by the council.

(Code 1978, § 11-33; Code 1993, § 14-342)

Sec. 10-469. Determination.

All buildings or structures, including but not limited to mobile homes or portable-type buildings, which have any or all of the following defects or lack of facilities shall be deemed substandard buildings or structures:

(1) All buildings or structures that have become deteriorated through natural causes or by damage through exposure to the elements, especially wind, hail or rain, or damage through fire, to the extent that the roof, windows and doors, or portions of the house, building or structure which protect from the weather, will no longer reasonably protect from the weather.

(2) All buildings or structures which constitute, or in which are maintained, fire hazards.

(3) All buildings or structures which are so structurally deteriorated that they are in danger of collapse, or which cannot be expected to withstand reasonable anticipated storms and/or hurricanes.

(4) All buildings or structures so constructed or permitted to be so constructed as to constitute a menace to health or safety, including all conditions conducive to the harboring of rats or mice or other disease-carrying animals or insects reasonably calculated to spread disease, including such conditions hazardous to safety as adequate bracing or the use of deteriorated materials.

(Code 1978, § 11-34; Code 1993, § 14-343)

Sec. 10-470. Nuisance declared.

All substandard buildings or structures within the term of this article which shall constitute a menace to the health, morals, safety or general welfare of its occupants or of the public are declared to be public nuisances and shall be ordered to be vacated, repaired or demolished as hereinafter provided.

(Code 1978, § 11-35; Code 1993, § 14-344)

Sec. 10-471. Inspectors.

It shall be the duty of the ex officio members of the building standards commission to inspect all buildings or structures reported to be or believed to be substandard and to present a report of such inspection to the commission, which shall, except in cases of emergency as set forth in section 10-474,

notify the proper party of the intention of such commission to hold its hearing and follow the procedure provided in section 10-473.

(Code 1978, § 11-37; Code 1993, § 14-345)

Sec. 10-472. Criteria for determination of repair, vacation or demolition.

The following standards may be followed in substance by the building standards commission in ordering repair, vacation or demolition:

(1) If the substandard building or structure can reasonably be repaired so that it will no longer be in a condition which is in violation of the terms of this article, it shall be ordered repaired.

(2) If the substandard building or structure is in such condition as to make it dangerous to the health, morals, safety or general welfare of its occupants or the public, it shall be ordered to be vacated.

(3) In any case where a substandard building or structure is 50 percent damaged or decayed, it shall be demolished, and in all cases where a building cannot be repaired so that its existence will no longer be in violation of the terms of this article, it shall be demolished.

(Code 1978, § 11-38; Code 1993, § 14-346)

Sec. 10-473. Procedure for condemnation.

Where an emergency does not exist, the following steps may be taken in the condemnation of a substandard building:

(1) When it shall come to the notice of the building standards commission that a building or structure in the city is substandard under the terms of this article, the commission may cite the owner of the building or structure or his authorized agent or representative to appear and show cause why such building should not be declared to be a substandard building and why he should not be ordered to vacate, repair or destroy such building or structure. The date of such hearing shall be not less than ten days after such citation shall have been made.

(2) Such citation may be served by delivery of a copy thereof to the owner or the person in possession, or, if such premises is unoccupied, by attaching a copy of such citation in a place of prominence on such building or structure.

(3) On the day set in such citation for the hearing, the hearing shall be had and on the basis of such hearing the building standards commission shall determine whether or not such building or structure is a substandard building or structure; then, in that event, the commission shall issue such orders as shall appear reasonably necessary to prevent the building or structure from being a hazard to life or property and to eliminate the building or structure's substandard qualities.

(4) The owner of any substandard building or structure or his authorized representative may appeal from the decision of the building standards commission by giving notice thereof within ten days from the date of the hearing to the city secretary and file with the city secretary a fee as is adopted by resolution. Such appeal shall be to the city council, and upon the perfection of appeal the city council shall set a date for having before it and such appeal shall be by a trial de novo.

(5) Pending appeal, such orders of the building standards commission as shall require vacation of the alleged substandard building or structure or such emergency measures as may have been ordered shall remain in effect, but all other orders of the commission shall be suspended in their operation.

(Code 1978, § 11-39; Code 1993, § 14-347)

Sec. 10-474. Emergency measures for condemnation.

When it shall appear that a building or structure in the city is a substandard building or structure under the terms of this article and that such building or structure or the manner of its use constitutes an immediate and serious danger to life or property, the condition shall be deemed a condition justifying the use of emergency measures, and the building standards commission, or a majority of the commissioners, may order any of the following emergency measures to be taken:

(1) Immediate vacation of such building, structure and/or adjoining buildings or structures.

(2) Vacation of the danger area around such building or structure.

(3) Such emergency shoring-up and bracing of walls, roofs and supports as are required to render such buildings or structures safe.

(4) The destruction of such walls, roofs and supports or the entire structure or so much thereof as cannot be braced or made secure.

(5) The posting of notices on or near such building or structure notifying the public of such order and ordering all persons to keep out of such building or structure and the areas of danger surrounding it.

(Code 1978, § 11-40; Code 1993, § 14-348)

Sec. 10-475. Notice of emergency measures.

When any of the measures as set forth in section 10-474 are ordered to be taken, notice of such order shall be given as follows:

(1) Such order shall be directed to the owner of such building or structure or his authorized representative, if such shall be known. Where notification can be accomplished without increasing the danger to life or property, notice shall be given by personal service on the owner, if known, of the building or structure or his representative.

(2) If such notification would create such a delay as would materially increase the danger to life or property, then such notice need not be given.

(Code 1978, § 11-41; Code 1993, § 14-349)

Sec. 10-476. Lien against property.

If notification is unnecessary or if such notice is given and the owner or his representative shall refuse or fail to carry out the order of the building standards commission or shall fail to carry out such order satisfactorily in the judgment of the commission, then, in either of such events, the commission, upon approval of the mayor, may proceed to carry out such order, either by private contract or through an agency of the city, and all costs thus incurred shall constitute a valid lien against the property so affected.

(Code 1978, § 11-42; Code 1993, § 14-350)

Chapter 11 RESERVED

Chapter 12 ELECTIONS [1]

ARTICLE I. - IN GENERAL

ARTICLE II. - POLITICAL CONTRIBUTIONS

FOOTNOTE(S):

--- (1) ---

State Law reference— Elections generally, V.T.C.A., Election Code ch. 1 et seq. (Back)

ARTICLE I. IN GENERAL

Secs. 12-1—12-18. Reserved.

Secs. 12-1—12-18. Reserved.

ARTICLE II. POLITICAL CONTRIBUTIONS [2]

Sec. 12-19. Definitions.

Sec. 12-20. Limitation on total contributions by individual.

Sec. 12-21. Contribution limits indexed.

Sec. 12-22. Contributions by minors.

Sec. 12-23. No contributions at city hall.

Sec. 12-24. Exceptions and other defenses.

Sec. 12-19. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Candidate means a person who has taken affirmative action, as described by the law regulating political funds and campaigns, for the purpose of gaining election to a municipal office.

Contribution means a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. The term "contribution" includes a loan or extension of credit, or a guarantee of a loan or extension or credit, other than a loan made in the due course of business by a corporation that is legally engaged in the business of lending money and that has conducted the business continuously for more than one year before the loan is made.

Election means an initial general or special election to select a person for a municipal office, and includes a runoff election, if any, associated therewith.

Measure means a question or proposition submitted in a city election for an expression of the voter's will.

Political committee means a group of persons that has a principal purpose of accepting political contributions or making political expenditures with regard to a measure.

Political contribution means a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for a city elective office or a city measure.

(Ord. No. 2008-02, § 2(25-1), 2-18-2008)

Sec. 12-20. Limitation on total contributions by individual.

(a) It shall be unlawful for any person to make a political contribution to a candidate that in the aggregate exceeds $1,000.00 per election.

(b) It shall be unlawful for any person to make a political contribution to a political committee that in the aggregate exceeds $1,000.00 per election.

(c) No candidate for mayor or city council, or any member of his campaign committee, shall accept a campaign contribution in excess of $1,000.00 per election from any person, except the candidate.

(d) No political committee shall accept a campaign contribution in excess of $1,000.00 per election from any person.

(Ord. No. 2008-02, § 2(25-2), 2-18-2008)

Sec. 12-21. Contribution limits indexed.

The amount of the contribution limit shall be modified each year with the adoption of the city budget to increase or decrease in accordance with the most recently published federal government, bureau of labor statistics indicator, consumer price index (CPI-W U.S. city averages) U.S. city average.

(Ord. No. 2008-02, § 2(25-3), 2-18-2008)

Sec. 12-22. Contributions by minors.

Any contribution from a minor child shall be deemed a contribution from the child's parents and/or legal guardians.

(Ord. No. 2008-02, § 2(25-4), 2-18-2008)

Sec. 12-23. No contributions at city hall.

It shall be unlawful for any person to deliver a contribution to a candidate at the city hall. It is a defense to prosecution that the delivery was made by the United States Postal Service or other commercial delivery service or common carrier.

(Ord. No. 2008-02, § 2(25-5), 2-18-2008)

Sec. 12-24. Exceptions and other defenses.

Nothing in this article applies to the solicitation, acceptance, or use of contributions for:

(1) Defending a pending criminal action or prosecuting or defending a pending civil action brought by or against a person in the person's status as a candidate or officeholder; or

(2) Participating in an election contest or participating in a civil action to determine a person's eligibility.

(Ord. No. 2008-02, § 2(25-6), 2-18-2008)

FOOTNOTE(S):

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State Law reference— Regulating political funds and campaigns, V.T.C.A., Election Code ch. 251 et seq. (Back)

Chapter 13 RESERVED

Chapter 14 EMERGENCY MANAGEMENT [1]

Sec. 14-1. Director—Generally.

Sec. 14-2. Same—Powers and duties.

Sec. 14-3. Emergency coordinator.

Sec. 14-4. Organization.

Sec. 14-5. Plan.

Sec. 14-6. National Incident Management System.

Sec. 14-7. Interjurisdictional program.

Sec. 14-8. Chapter provisions prevail.

Sec. 14-9. Liability.

Sec. 14-10. Commitment of funds.

Sec. 14-11. Offenses; penalties.

Sec. 14-1. Director—Generally.

(a) There exists the office of emergency management director of the city, which shall be held by the mayor in accordance with state law.

(b) The director shall be responsible for a program of comprehensive emergency management within the city and for carrying out the duties and responsibilities set forth in this chapter. He may delegate authority for execution of these duties to the emergency management coordinator, but ultimate responsibility for such execution shall remain with the director.

(Code 1993, § 22-26; Ord. No. 92-16, § 2(b), 10-19-1992)

Sec. 14-2. Same—Powers and duties.

The duties and responsibilities of the emergency management director shall include the following:

(1) Conduct an ongoing survey of actual or potential hazards which threaten life and property within the city and an ongoing program of identifying and requiring or recommending the implementation of measures which would tend to prevent the occurrence or reduce the impact of such hazards if a disaster did occur.

(2) Supervision of the development and approval of an emergency management plan for the city, and recommend for adoption by the city council all mutual aid arrangements deemed necessary for the implementation of such plan.

(3) Authority to declare a local state of disaster. The declaration may not be continued or renewed for a period in excess of seven days except by or with the consent of the city council. Any order or proclamation declaring, continuing, or terminating a local state of disaster shall be given prompt and general publicity and shall be filed promptly with the city secretary.

(4) Issuance of necessary proclamations, regulations or directives which are necessary for carrying out the purposes of this chapter. Such proclamations, regulations or directives shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless circumstances attendant on the disaster prevent or impede, promptly filed with the city secretary.

(5) Direction and control of the operations of the city emergency management organization as well as the training of emergency management personnel.

(6) Determination of all questions of authority and responsibility that may arise within the emergency management organization of the city.

(7) Maintenance of liaison with other municipal, county, district, state, regional or federal emergency management organizations.

(8) Marshaling of all necessary personnel, equipment, or supplies from any department of the city to aid in the carrying out of the provisions of the emergency management plan.

(9) Supervision of the drafting and execution of mutual aid agreements, in cooperation with the representatives of the state and of other local political subdivisions of the state, and the drafting and execution, if deemed desirable, of an agreement with the county in which the city is located and with other municipalities within the county, for the county-wide coordination of emergency management efforts.

(10) Supervision of and final authorization for the procurement of all necessary supplies and equipment, including acceptance of private contributions which may be offered for the purpose of improving emergency management within the city.

(11) Authorizing of agreements, after approval by the city attorney, for use of private property for public shelter and other purposes.

(12) Survey of the availability of existing personnel, equipment, supplies, and services which could be used during a disaster.

(13) Other requirements as specified in the Texas Disaster Act of 1975, V.T.C.A., Government Code ch. 418.

(Code 1993, § 22-27; Ord. No. 92-16, § 3, 10-19-1992)

Sec. 14-3. Emergency coordinator.

The fire chief is hereby appointed by the city council as the emergency management coordinator of the city, and he shall serve as such at the pleasure of the city council.

(Code 1993, § 22-28; Ord. No. 92-16, § 2(a), 10-19-1992)

Sec. 14-4. Organization.

The operational emergency management organization of the city shall consist of the officers and employees of the city so designated by the director in the emergency management plan, as well as organized volunteer groups. The functions and duties of this organization shall be distributed among such officers and employees in accordance with the terms of the emergency management plan.

(Code 1993, § 22-29; Ord. No. 92-16, § 2(c), 10-19-1992)

Sec. 14-5. Plan.

A comprehensive emergency management plan shall be developed and maintained in a current state. The plan shall set forth the form of the organization; establish and designate divisions and functions; assign responsibilities, tasks, duties and powers; and designate officers and employees to carry out the provisions of this chapter. As provided by state law, the plan shall follow the standards and criteria established by the state division of emergency management. Insofar as possible, the form of organization, titles and terminology shall conform to the recommendations of the state division of emergency management. When approved, it shall be the duty of all departments and agencies to perform the functions assigned by the plan and to maintain their portion of the plan in a current state of readiness at all times. The emergency management plan shall be considered supplementary to this chapter and have the effect of law during the time of a disaster.

(Code 1993, § 22-30; Ord. No. 92-16, § 4, 10-19-1992)

Sec. 14-6. National Incident Management System.

The city council hereby adopts the National Incident Management System (NIMS) dated March 1, 2005.

(Code 1993, § 50-4; Ord. No. 2005-07, 9-6-2005)

Sec. 14-7. Interjurisdictional program.

The mayor is hereby authorized to join with the county judge and the mayors of the other cities in the county in the formation of an interjurisdictional emergency management program for the county, and shall have the authority to cooperate in the preparation of an interjurisdictional emergency management plan and in the appointment of a joint emergency management coordinator, as well as all powers necessary to participate in a county-wide program of emergency management insofar as the program may affect the city.

(Code 1993, § 22-31; Ord. No. 92-16, § 5, 10-19-1992)

Sec. 14-8. Chapter provisions prevail.

At all times when the orders, rules, and regulations made and promulgated pursuant to this chapter shall be in effect, they shall supersede and override all existing ordinances, orders, rules, and regulations insofar as the latter may be inconsistent therewith.

(Code 1993, § 22-32; Ord. No. 92-16, § 6, 10-19-1992)

Sec. 14-9. Liability.

This chapter is an exercise by the city of its governmental functions for the protection of the public peace, health, and safety and neither the city, the agents and representatives of the city, nor any individual, receiver, firm, partnership, corporation, association or trustee, nor any of the agents thereof, in good faith carrying out, complying with or attempting to comply with, any order, rule or regulation promulgated pursuant to the provisions of this chapter shall be liable for any damage sustained to persons as the result of such activity. Any person owning or controlling real estate or other premises who voluntarily and without compensation grants to the city a license of privilege, or otherwise permits the city to inspect, designate, and use the whole or any part of such real estate or premises for the purpose of sheltering persons during an actual, impending or practice enemy attack or natural or manmade disaster

shall, together with his successors in interest, if any, not be civilly liable for the death of, or injury to, any person on or about such real estate or premises under such license, privilege or other permission or for loss of, or damage to, the property of such person.

(Code 1993, § 22-33; Ord. No. 92-16, § 7, 10-19-1992)

Sec. 14-10. Commitment of funds.

No person shall have the right to expend any public funds of the city in carrying out any emergency management activity authorized by this chapter without prior approval by the city council, nor shall any person have any right to bind the city by contract, agreement, or otherwise without prior and specific approval of the city council unless during a declared disaster. During a declared disaster, the mayor may expend and/or commit public funds of the city when deemed prudent and necessary for the protection of health, life or property.

(Code 1993, § 22-34; Ord. No. 92-16, § 8, 10-19-1992)

Sec. 14-11. Offenses; penalties.

(a) It shall be unlawful for any person willfully to obstruct, hinder, or delay any member of the emergency management organization in the enforcement of any rule or regulation issued pursuant to this chapter.

(b) It shall likewise be unlawful for any person to wear, carry, or display any emblem, insignia, or any other means of identification as a member of the emergency management organization of the city, unless authority to do so has been granted to such person by the proper officials.

(c) Any unauthorized person who shall operate a siren or other device so as to simulate a warning signal, or the termination of a warning, shall be deemed guilty of a violation of this chapter and shall be subject to the penalties imposed in section 1-14

(Code 1993, § 22-35; Ord. No. 92-16, § 9, 10-19-1992)

FOOTNOTE(S):

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State Law reference— Emergency management, V.T.C.A., Government Code ch. 418; municipal programs, V.T.C.A., Government Code § 418.103. (Back)

Chapter 15 RESERVED

Chapter 16 EMERGENCY SERVICES

ARTICLE I. - IN GENERAL

ARTICLE II. - EMERGENCY ALARM SYSTEMS

ARTICLE III. - EMERGENCY MEDICAL SERVICES AND AMBULANCE REGULATIONS

ARTICLE I. IN GENERAL

Secs. 16-1—16-18. Reserved.

Secs. 16-1—16-18. Reserved.

ARTICLE II. EMERGENCY ALARM SYSTEMS [1]

DIVISION 1. - GENERALLY

DIVISION 2. - PERMITS/REGISTRATION ACCOUNTS AND APPLICATIONS

DIVISION 3. - OFFENSES AND PENALTIES

FOOTNOTE(S):

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State Law reference— Municipal regulation of burglar alarm systems, V.T.C.A., Local Government Code § 214.191 et seq. (Back)

DIVISION 1. GENERALLY

Sec. 16-19. Definitions.

Sec. 16-20. Policies and procedures.

Sec. 16-21. Public safety response.

Sec. 16-22. Governmental immunity.

Secs. 16-23—16-47. Reserved.

Sec. 16-19. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alarm notification means a notification to the city police or fire department, intended to summon the proper public safety entity, and designed to be initiated:

(1) Intentionally by a person;

(2) By an alarm system that responds to a stimulus characteristic of unauthorized intrusion; or

(3) By an automatic or manual response to an incident of a fire or by the activation of a fire suppression or fire detection system.

Alarm site means the property served by an alarm system and under the control of a single owner, tenant, or lessor.

Commercial site means every premises or location where any business activity is regularly conducted and that is served by an alarm system. Each unit of a business premises or business location, if served by a separate alarm system in a multi-unit building or complex, shall be considered a separate commercial alarm system site.

Education/government site means every premises or location of a public or private school, as well as every location of a federal, state, county, or municipal governmental building.

Financial site means every premises or location of a financial institution that is required to have an alarm system pursuant to the Bank Protection Act of 1968.

Residential site means a single-family residence and each residential unit of a multi-unit building or complex that is served by an alarm system.

Alarm system means electrical, electronic, or mechanical equipment that emits, transmits, or relays a signal intended to summon the police or fire department by direct or indirect means, except:

(1) An alarm system installed on a motor vehicle, unless the vehicle is permanently located at an alarm site;

(2) An alarm system designed to alert only the residents of a premises not equipped with a local alarm;

(3) An alarm system installed on a premises:

a. Occupied by the United States Government; or

b. Owned and occupied by state government.

Alarm system business means a person who sells, installs, services, monitors, or responds to alarm systems or alarm notifications.

Burglar alarm means a device or system that transmits a signal intended to summon police in response to a burglary.

False alarm notification means an alarm notification to the police or fire department resulting in a finding by the responding officer or fire officer or a subsequent investigation by the city, that there is no evidence of actual or attempted unauthorized intrusion, robbery, attempted robbery, other illegal activity or the presence of fire.

Fire alarm system means an alarm system intended to summon the fire department for the presence of smoke, fire, heat, or sprinkler system activation, activated by manual or automatic means.

Local alarm means an alarm system that emits a signal at an alarm site that is audible or visible from the exterior of a structure and is not connected to a monitoring site.

Master alarm permit means a permit issued to the owner or property manager of a residential apartment complex in which an alarm system operates in one or more individual residential units.

Owner means the person in control of the property, including, but not limited to, every person in possession of land within the corporate limits of the city either as owner, purchaser, lessee, tenant or licensee.

Panic alarm means an alarm system that is utilized at either a business, or at the residence of a person, monitored by an alarm system company, and designed only to permit the person to signal the occurrence of a personal emergency so that the company may dispatch appropriate aid.

Permit holder means the individual responsible for payment of all fees, charges or any civil action that may arise from the operation of an alarm system.

(Ord. No. 2010-06, § 2(26.1), 7-6-2010)

Sec. 16-20. Policies and procedures.

The city manager may:

(1) Adopt policies and procedures to implement this article;

(2) Publish standards of operation for an alarm system; and

(3) Provide a copy of the standards to each permit holder.

(Ord. No. 2010-06, § 2(26.2), 7-6-2010)

Sec. 16-21. Public safety response.

The city police department or the city fire department shall respond to the activation of a permitted alarm system as prescribed by the policies and procedures adopted by the city manager, including the response priorities established by the departments.

(Ord. No. 2010-06, § 2(26.3), 7-6-2010)

Sec. 16-22. Governmental immunity.

An alarm permit is not intended to, nor will it, create a contract, duty or obligation, either expressed or implied, for a city emergency response. Any and all liability and consequential damage resulting from the failure or inability to respond to a notification is hereby disclaimed and governmental immunity as provided by law is retained. By applying for an alarm permit, the alarm user acknowledges that a city emergency response may be influenced by factors such as the availability of city emergency services, priorities of calls, weather conditions, emergency conditions, staffing levels, and prior response history.

(Ord. No. 2010-06, § 2(26.4), 7-6-2010)

Secs. 16-23—16-47. Reserved.

DIVISION 2. PERMITS/REGISTRATION ACCOUNTS AND APPLICATIONS

Sec. 16-48. Permit/registration account required.

Sec. 16-49. Permit/registration account application fees.

Sec. 16-50. Permits/registration accounts for system in an apartment complex.

Sec. 16-51. Permit/registration account applications and renewal.

Sec. 16-52. Permit/registration account terms.

Sec. 16-53. Other fees.

Sec. 16-54. Grounds for permit/registration account denial.

Sec. 16-55. Permit/registration account revocation.

Sec. 16-56. Reinstatement of permit/registration account.

Sec. 16-57. Appeal from denial or revocation.

Sec. 16-58. Operation and maintenance of an alarm system.

Sec. 16-59. False alarm notification.

Secs. 16-60—16-76. Reserved.

Sec. 16-48. Permit/registration account required.

(a) A person shall obtain an alarm permit/registration account issued by the city before the person operates an alarm system.

(b) A person must obtain a separate alarm permit/registration account for each alarm site.

(c) A permit/registration account holder shall:

(1) Keep the alarm permit/registration account at the alarm site; and

(2) Produce the alarm permit/registration account for inspection at the request of an employee of the police or fire department.

(Ord. No. 2010-06, § 2(26.10), 7-6-2010)

Sec. 16-49. Permit/registration account application fees.

The nonrefundable application fee for an alarm permit/registration account, an annual permit/registration account renewal, or a permit/registration account reinstatement is as currently established or as hereafter adopted by resolution of the city council from time to time.

(Ord. No. 2010-06, § 2(26.11), 7-6-2010)

Sec. 16-50. Permits/registration accounts for system in an apartment complex.

(a) The owner or property manager of an apartment complex shall obtain a master alarm permit/registration account if an alarm system is operated in:

(1) A residential unit on the premises, whether the alarm system is furnished by the owner or property manager or contracted for by an individual tenant; or

(2) A nonresidential area of the apartment complex, including a common tenant area, office, storage, or equipment area.

(b) A tenant of an apartment complex shall obtain an individual alarm permit/registration account before the tenant operates or causes the operation of an alarm system in the tenant's residential unit.

(Ord. No. 2010-06, § 2(26.12), 7-6-2010)

Sec. 16-51. Permit/registration account applications and renewal.

(a) A person who owns, leases, occupies, or manages an alarm site shall file an application for an alarm permit/registration account and the application fee under this division with the city on an approved form, which contains the following information:

(1) The name, address, telephone number, and driver's license number of the person who will be the permit/registration account holder and be responsible for the proper maintenance and operation of the alarm system and payment of fees assessed under this division;

(2) The classification of the alarm site as either residential or commercial;

(3) Identification of the alarm system as either a burglar alarm, hold-up, panic, duress alarm, fire alarm system or a combination of the systems described in this subsection;

(4) Any other information required by the city that is necessary for the enforcement of this division.

(b) A permittee/registration account holder shall file an application to renew a permit/registration account not later than 30 days before its expiration.

(Ord. No. 2010-06, § 2(26.13), 7-6-2010)

Sec. 16-52. Permit/registration account terms.

(a) A permit/registration account issued under this article is effective for 12 months from the date of issuance.

(b) A permit/registration account issued under this article is nontransferable and nonrefundable.

(Ord. No. 2010-06, § 2(26.14), 7-6-2010)

Sec. 16-53. Other fees.

A permittee/registration account holder, including the holder of a master alarm permit/registration account, shall pay to the city:

(1) The permit/registration account application fee;

(2) A late payment fee, if the person fails to pay the permit/registration account fee by its due date; and

(3) Other fees related to a permit/registration account, including a false alarm service fee assessed under section 16-59

(Ord. No. 2010-06, § 2(26.15), 7-6-2010)

Sec. 16-54. Grounds for permit/registration account denial.

The city manager may deny an application for a permit/registration account after at least 30 days' notice if the applicant has:

(1) Made a false statement on the application;

(2) Made a false oral statement in connection with the application;

(3) Failed to pay a fee assessed under this article; or

(4) Had an alarm permit/registration account for an alarm site revoked and the violation resulting in the revocation remains uncorrected.

(Ord. No. 2010-06, § 2(26.16), 7-6-2010)

Sec. 16-55. Permit/registration account revocation.

The city shall revoke an alarm permit/registration account if the city manager determines after at least 30 days' notice that:

(1) An applicant has made:

a. A false statement on a permit/registration account application; or

b. A false oral statement relating to a permit/registration account application.

(2) A permittee/registration account holder has:

a. Violated this article;

b. Failed to pay a fee assessed under this article; or

c. Failed to maintain the alarm system to minimize false alarm notifications and ensure proper operation of the alarm system.

(Ord. No. 2010-06, § 2(26.17), 7-6-2010)

Sec. 16-56. Reinstatement of permit/registration account.

The city manager may reinstate a permit/registration account revoked under section 16-55 if the city manager determines that the applicant:

(1) Has paid the fees required under section 16-53; and

(2) Operates the alarm system in accordance with this article.

(Ord. No. 2010-06, § 2(26.18), 7-6-2010)

Sec. 16-57. Appeal from denial or revocation.

(a) If the city manager denies an application for, or revokes an alarm permit/registration account, then the city manager shall notify the applicant or permittee/registration account holder by certified mail, return receipt requested.

(b) Not later than the tenth day after the affected person receives notice of an adverse action by the city manager, the person may file a notice of appeal to the municipal court, including the reason for the appeal. Failure to file a timely appeal under this subsection results in the city manager's action becoming final.

(c) If an applicant or permittee/registration account holder files a timely appeal under this section, the city manager's action is stayed.

(d) The municipal court shall hear the appeal. The municipal court:

(1) Shall make a decision based on the basis of a preponderance of the evidence presented;

(2) Shall render a decision not later than the 60th day after an appeal is filed; and

(3) May affirm, reverse, or modify the action of the city manager.

(e) The decision of the municipal court is final.

(Ord. No. 2010-06, § 2(26.19), 7-6-2010)

Sec. 16-58. Operation and maintenance of an alarm system.

(a) A permittee/registration account holder:

(1) Shall maintain premises containing an alarm system to ensure the proper operation of the alarm system;

(2) Shall maintain the alarm system to minimize false alarm notifications;

(3) Within one hour of notification by the city that an alarm system requires repair or inactivation, shall:

a. Respond or cause an alarm system business representative to respond to repair or inactivate the malfunctioning alarm system;

b. Provide access to the premises; or

c. Provide security for the premises.

(4) May not manually activate an alarm system except to report the occurrence of an event that the alarm system was designed to report.

(b) A permittee/registration account holder with a local alarm shall adjust the mechanism to prevent an alarm signal from sounding for longer than 15 minutes after activation.

(c) A permittee/registration account holder shall notify the city if the permittee/registration account holder relinquishes control of the alarm site and cancels the permit/registration account. If a

permittee/registration account holder fails to notify the city under this section, the permittee/registration account holder shall pay fees associated with the permit/registration account, if any.

(Ord. No. 2010-06, § 2(26.20), 7-6-2010)

Sec. 16-59. False alarm notification.

(a) If an alarm system transmits more than three false burglar alarms or fire alarm notifications within a 12-month period, the permittee/registration account holder shall pay a service fee for the fourth and each subsequent false burglar alarm notification.

(1) Residential alarms.

a. For each response for the first through the third—No fee.

b. For each response after the third through the fifth—$25.00.

c. For each response after the fifth through the eighth—$50.00.

d. For each response after the eighth—$100.00.

(2) Commercial alarms.

a. For each response for the first through the third—No fee.

b. For each response after the third through the fifth—$50.00.

c. For each response after the fifth through the eighth—$75.00.

d. For each response after the eighth—$100.00.

(b) If an alarm system transmits more than two false panic alarm notifications within a 12-month period, the permittee/registration account holder shall pay the maximum service fee permitted by state law, but not more than $100.00, for the third and each subsequent false panic alarm notification.

(c) A tenant holding an individual alarm permit/registration account shall pay a false alarm notification fee related to a transmission from the alarm system in the tenant's unit.

(d) The permittee/registration account holder holding the master alarm permit/registration account shall pay a false alarm notification fee related to a transmission from an unoccupied unit or a unit for which a tenant has not obtained an individual alarm permit/registration account.

(e) The city manager may investigate and waive payment of a service fee assessed under this section.

(Ord. No. 2010-06, § 2(26.21), 7-6-2010)

Secs. 16-60—16-76. Reserved.

DIVISION 3. OFFENSES AND PENALTIES

Sec. 16-77. Offenses.

Sec. 16-78. Penalties.

Secs. 16-79—16-99. Reserved.

Sec. 16-77. Offenses.

(a) A person commits an offense if the person operates, causes to be operated, or allows the operation of an alarm system:

(1) Without a permit issued under this article;

(2) In violation of this article; or

(3) That automatically dials the 911 emergency communications system.

(Ord. No. 2010-06, § 2(26.30), 7-6-2010)

Sec. 16-78. Penalties.

(a) A person who fails to comply with this article commits a Class C misdemeanor.

(b) In addition to a criminal penalty under this article, a person who operates, causes to be operated, or allows to be operated an alarm system without a valid permit shall be charged a fee for each police department or fire department response to the activation of an unpermitted alarm system.

(c) In this article, a guilty plea, deferred disposition, deferred adjudication, or probation by a court of competent jurisdiction constitutes a conviction.

(d) A person who makes a false statement on an application commits a violation of V.T.C.A., Penal Code § 37.10 (Tampering with governmental record).

(Ord. No. 2010-06, § 2(26.31), 7-6-2010)

Secs. 16-79—16-99. Reserved.

ARTICLE III. EMERGENCY MEDICAL SERVICES AND AMBULANCE REGULATIONS [2]

DIVISION 1. - GENERALLY

DIVISION 2. - AMBULANCES

DIVISION 3. - NONEMERGENCY TRANSFER SERVICES

FOOTNOTE(S):

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State Law reference— Texas Emergency Medical Services Act, V.T.C.A., Health and Safety Code ch. 773. (Back)

DIVISION 1. GENERALLY

Sec. 16-100. Definitions.

Sec. 16-101. Interference with department personnel, equipment.

Sec. 16-102. Penalty.

Secs. 16-103—16-132. Reserved.

Sec. 16-100. Definitions.

For the purposes of this article, certain terms and phrases are defined as follows:

Ambulance means any privately or publicly-owned motor vehicle used, designed or redesigned and equipped for the primary purpose of the transportation of the sick or injured persons, whether functioning as a basic life support, advanced life support, or mobile intensive care unit service level as provided by state law.

City limits means the area in the city within the corporate city limits.

Department means the designated emergency medical service for the city, as authorized by the county emergency services District 8.

DSHS means the department of state health services as presently constituted, or a successor agency.

Direct call means a request for ambulance service made by telephone or other means directly to an ambulance operator, his agents or employees.

EMS chief means the department head of the emergency medical service, as authorized by the county emergency services District 8.

Emergency ambulance means an ambulance used, designed, redesigned or equipped for the purpose of transporting sick or injured persons under emergency circumstances and the rendering of first aid.

Emergency circumstance means the existence of circumstances in which the element of time in expeditiously transporting a sick or injured person for medical or surgical treatment is essential to the health or life of such person, and in which rescue operations or competent first aid or both, at the place of emergency, may be essential to the health or life of such person.

ETJ means the city's extraterritorial jurisdiction.

Nonemergency transfer services means a pre-scheduled response made by an ambulance for the transportation of individuals to or from a medical facility, a nursing home, an assisted living facility, dialysis center, or residence under circumstances which do not constitute an emergency.

Nonemergency transfer service permit means a certificate of authorization issued by the city to the owner allowing such owner to operate an ambulance for nonemergency medical transfer services within the city limits.

Nonemergency transfer service provider means a person providing nonemergency medical transfer services and holding a valid nonemergency transfer service permit.

(Ord. No. 2012-47, § 1(27-1), 11-19-2012)

Sec. 16-101. Interference with department personnel, equipment.

It shall be unlawful for any person to intentionally or knowingly physically obstruct any department personnel proceeding to the scene or reported scene of any accident or emergency call, or to physically obstruct any department personnel in the course of treating the sick or injured at any such scene. It shall be unlawful for any person to intentionally or knowingly fail or refuse to surrender any sick or injured person to the care of any department personnel at the scene of any accident or emergency call. It shall be unlawful for any person to intentionally or knowingly damage, destroy or deface any attached or unattached apparatus or equipment belonging to the department or any structure used to house or protect such apparatus or equipment.

(Ord. No. 2012-47, § 1(27-2), 11-19-2012)

Sec. 16-102. Penalty.

Any person who violates or fails to comply with the requirements or provisions of this article shall be deemed guilty of a misdemeanor. In addition, the city attorney is authorized to file suit in any court of competent jurisdiction to enjoin any person from violating or causing to be violated any of the sections of this article.

(Ord. No. 2012-47, § 1(27-3), 11-19-2012)

Secs. 16-103—16-132. Reserved.

DIVISION 2. AMBULANCES

Sec. 16-133. Personnel required during operation of an ambulance.

Sec. 16-134. Licensing and operating condition requirements for ambulances.

Sec. 16-135. Safety and first-aid equipment required.

Sec. 16-136. Operation of emergency ambulances.

Sec. 16-137. Certain operations unlawful; exceptions.

Sec. 16-138. Duty to render aid.

Sec. 16-139. Solicitation unlawful.

Secs. 16-140—16-161. Reserved.

Sec. 16-133. Personnel required during operation of an ambulance.

It shall be unlawful to operate, drive or cause to be operated or driven an ambulance on a public street of the city when furnishing ambulance service, including emergency ambulances operated by the emergency medical service department of the city, unless such ambulance on each trip meets the minimum staffing requirements as set out in section 157.11(a) of Emergency Medical Services Rules adopted by the DSHS under section 773.050 of the Texas Emergency Medical Services Act (V.T.C.A., Health and Safety Code § 773.050).

(Ord. No. 2012-47, § 1(27-11), 11-19-2012)

Sec. 16-134. Licensing and operating condition requirements for ambulances.

No ambulance shall be operated upon the streets of the city for the purpose of furnishing ambulance service unless and until such ambulance has a valid license issued by the DSHS.

(Ord. No. 2012-47, § 1(27-12), 11-19-2012)

Sec. 16-135. Safety and first-aid equipment required.

No ambulance shall be operated upon the streets of the city for the purpose of furnishing ambulance service unless such ambulance is equipped as set out in section 157.11 of Emergency Medical Services Rules adopted by the DSHS under section 773.050 of the Texas Emergency Medical Services Act (V.T.C.A., Health and Safety Code § 773.050). Additionally, ambulances shall also meet the minimum

requirements as outlined, in writing, by the physician medical director of record for the licensed ambulance service provider and as outlined by the city as required equipment.

(Ord. No. 2012-47, § 1(27-13), 11-19-2012)

Sec. 16-136. Operation of emergency ambulances.

The operation of any emergency ambulance or emergency ambulance service within the territorial limits of the city is hereby declared to be a governmental function of the city, to be performed in accordance with the terms and provisions of this article.

(Ord. No. 2012-47, § 1(27-14), 11-19-2012)

Sec. 16-137. Certain operations unlawful; exceptions.

(a) It shall be unlawful for any person, other than a member of the department, while driving an ambulance, to furnish or attempt to furnish emergency ambulance service, or to drive or operate, or to cause to be driven or operated, any ambulance within the territorial limits of the city for the purpose of furnishing emergency ambulance service, except as otherwise provided in this section.

(1) A person may operate an ambulance in emergency ambulance service to a hospital when such person at the time has an established place of business at a permanent address outside the city and when:

a. The place of emergency at which the sick or injured patient was picked up by such ambulance is outside the city; and

b. The ambulance performing such emergency ambulance service is, at the time of such performance, duly licensed and being operated in accordance with the Texas Emergency Services Act (V.T.C.A., Health and Safety Code ch. 773).

(2) A person may operate an ambulance in emergency ambulance service when, by reason of department ambulances not being available, the department calls upon such person to furnish standby or backup emergency ambulance service within the city.

(3) A person may operate an ambulance in emergency ambulance service when, in the course of a nonemergency transport allowed in subsection (a)(1) of this section, a medical emergency arises in which the individual being transported requires emergency medical service after the transportation of the individual has begun.

(b) In each instance set out in subsections (a)(1) through (3) of this section, the driver or operator of such ambulance shall notify the city EMS/fire dispatcher of the conditions requiring the operation of his vehicle in emergency ambulance service, the location from which he is proceeding and the location to which he is proceeding under emergency ambulance service. Each ambulance being operated under the provisions of this section shall comply with all general requirements of this article regarding emergency ambulances of every nature. Upon arriving at his destination, the ambulance driver or ambulance operator will again notify the city EMS/fire dispatcher that he has arrived and is no longer in emergency ambulance service. When the driver or operator of an ambulance is responding to a direct call for ambulance service, either under emergency conditions or otherwise, he shall inform the city EMS/fire dispatcher of the location of such call and such information as he may have concerning the circumstances surrounding the request for service, and if the city EMS/fire dispatcher reports that a city designated ambulance is either en route to the same location, has arrived there or is closer and instructs such ambulance driver or operator not to respond to such call, it shall be unlawful for such driver or operator to so respond when instructed not to do so by the city EMS/fire dispatcher.

(Ord. No. 2012-47, § 1(27-15), 11-19-2012)

Sec. 16-138. Duty to render aid.

It shall be the duty of the driver or the attendant of any ambulance to render first aid and assistance to the sick or injured at the place of emergency. It shall further be the duty of the driver or attendant of any ambulance to notify the city EMS/fire dispatcher and to remain on the scene until relieved by the designated provider.

(Ord. No. 2012-47, § 1(27-16), 11-19-2012)

Sec. 16-139. Solicitation unlawful.

It shall be unlawful for any person, other than a member, officer or employee of the department, while operating or accompanying an ambulance within the territorial limits of the city, to solicit the business of providing emergency or nonemergency medical service or transporting the sick or injured.

(Ord. No. 2012-47, § 1(27-17), 11-19-2012)

Secs. 16-140—16-161. Reserved.

DIVISION 3. NONEMERGENCY TRANSFER SERVICES

Sec. 16-162. Permit required; exception.

Sec. 16-163. Insurance requirements.

Sec. 16-164. Inspection.

Sec. 16-165. Payment of ad valorem taxes.

Sec. 16-166. Special requirements for transfer ambulances.

Sec. 16-167. Issuance of permits.

Sec. 16-168. Renewal.

Sec. 16-169. Transferability.

Sec. 16-170. Alterations of terms by city council.

Sec. 16-171. Requirements for business location.

Sec. 16-172. Suspension or revocation; appeal.

Sec. 16-162. Permit required; exception.

(a) *Required.* No person shall furnish, operate, conduct, maintain, advertise or otherwise be engaged in the operation of medical transfer services upon or over any public street within the city limits without having first obtained a transfer services permit.

(b) *Exception.* A transfer services permit shall not be required for:

(1) Emergency medical service vehicles or ambulances owned or operated by or designated by a governmental entity;

(2) Emergency medical service vehicles or ambulances operating at the request of the city or the designated emergency medical service provider for the city or in cases of a mutual aid, disaster, or system overload;

(3) Emergency medical service vehicles or ambulances operating from a location outside the city limits and who are transporting patients from a location outside the limits of the city to a location within the city or through the city to some other location; or

(4) An application for license to operate an ambulance on the public streets of the city for the purpose of providing ordinary and/or nonemergency ambulance service within the city shall be made by the owner thereof for each ambulance so used or to be so used, or an agent authorized in writing by such owner to make such application, on forms obtained from the city secretary, which shall contain at a minimum the following:

a. The name, address and telephone number of the owner;

b. Any trade or other fictitious name used or to be used by the owner when providing ambulance service;

c. The make, model, year of manufacture, motor and chassis number, and current state license number of each ambulance;

d. The length of time each ambulance has been in service;

e. The color scheme, insignia, name, monogram or other distinguishing characteristics used or to be used by the owner to designate such ambulance together with an accurate photograph of each ambulance to be permitted;

f. A list of all current employees of the ambulance service including name and date of birth for each employee; and

g. Each application for a permit required by the city shall be accompanied by a non-refundable permit fee, payable to the city, as established by resolution of city council.

(Ord. No. 2012-47, § 1(27-21), 11-19-2012)

Sec. 16-163. Insurance requirements.

(a) Any applicant for a permit under this division shall, before the permit can be issued, procure, maintain, and furnish proof of financial responsibility as required by law and as prescribed in this section. The applicant shall keep in full force and effect, during the entire term of this permit, the required insurance coverage for commercial general liability, automobile liability and professional liability in the minimum limits as currently established or as hereafter adopted by resolution of the city council from time to time:

(1) Workers' compensation insurance.

(2) Applicant must agree to indemnify, defend, and hold harmless the city, its officers, employees and agents, and department, for any and all claims arising from applicant's acts or omissions. Additionally, the city shall be added as an additional insured on the policies, and the coverage shall contain no special limitation on the scope of protection afforded to the city.

(b) The insurance company shall be of sufficient assets, with an agent in the state upon whom service of the process may be made, and shall be approved by the city attorney. Every insurance policy and certificate of insurance must contain a provision or an endorsement requiring that the policy will not be cancelled, suspended, voided, or reduced until at least 30 days' prior written notice has been given to the city via certified mail, return receipt requested. If the policy does not provide coverage for "any auto" then a schedule of the covered autos is required to be submitted and filed with the city secretary. Only those covered autos will be permitted to operate within the city.

(c) If the city attorney determines that the insurance coverage required in subsection (a) of this section become so impaired as to require new and additional insurance, the city attorney shall require such additional insurance in such company as he may feel is necessary to ensure faithful performance by the operator of ambulances, his agents, servants, and employees.

(d) If the insurance policy is cancelled and no insurance policy is filed by the owner or ambulance operators before the cancellation, the permit to operate ambulances granted to such person shall be immediately and automatically revoked.

(Ord. No. 2012-47, § 1(27-22), 11-19-2012)

Sec. 16-164. Inspection.

(a) The city fire chief, or designee, or the police department shall have the right to inspect, at any time, all ambulances permitted or to be permitted under this division to determine if such vehicles meet the following minimum standards:

(1) Each vehicle shall be equipped according to the state DSHS equipment standards, and as determined by the ambulance service medical director, and as identified by the city as required equipment;

(2) Each vehicle shall be free from dirt or rubbish and shall be otherwise clean and sanitary;

(3) Each vehicle shall meet the general standards and requirements of this division;

(4) Each vehicle shall have the company name displayed on each side of the vehicle and on the rear;

(5) Each vehicle shall be inspected each year by a person authorized to conduct vehicle safety inspections by the state; and

(6) No vehicle shall display the identification "Emergency Ambulance," "Emergency," "911," or similar marking.

(b) At no time shall any ambulance that is found to be unsafe by the city fire chief, or designee, or the police department be operated on the streets of the city. Nothing in this section, however, shall prevent the city fire chief, or designee or the police department from inspecting any ambulance at any time. If the inspector finds that any ambulance is out of compliance, the city fire chief or designee shall order the use of the ambulance discontinued until the ambulance is re-inspected and approved.

(c) At no time shall a person operating a permitted transfer ambulance in the city, respond to or from a direct call for a medical transfer service, operate such ambulance under emergency conditions, using emergency equipment, until notifying the city EMS/fire dispatcher. The operator of the ambulance shall notify dispatch of the reason for emergency traffic, where responding from and destination.

(Ord. No. 2012-47, § 1(27-23), 11-19-2012)

Sec. 16-165. Payment of ad valorem taxes.

It shall be the duty of every medical transfer services provider to pay all ad valorem taxes assessed by the city against such vehicle and all other personal and real property used in such business and to provide to the city a certificate demonstrating that ad valorem taxes have been paid. The failure to pay such ad valorem taxes before they become 90 days delinquent shall result in revocation of the permit issued in accordance with this article.

(Ord. No. 2012-47, § 1(27-24), 11-19-2012)

Sec. 16-166. Special requirements for transfer ambulances.

(a) *Staffing.* No transfer ambulance vehicle shall ever be operated upon the streets, highways or other public places of the city unless such vehicle is operated by at least two validly permitted ambulance attendants, each of whom must possess a current emergency medical technician basic certificate.

(b) *Posting of fee schedule.* All transfer ambulance vehicles shall have a current fee schedule conspicuously posted in the patient's compartment.

(Ord. No. 2012-47, § 1(27-25), 11-19-2012)

Sec. 16-167. Issuance of permits.

(a) *Issuance.* The city secretary or his designee shall issue to each applicant a permit for each vehicle upon the applicant's filing of written proof of insurance as required in this division, upon ensuring that all city taxes on each vehicle and all other personal and real property used in such business have been paid and upon determination that all requirements of this article and all applicable state and federal statutes and regulations have been satisfied.

(b) *Duration.* Permits shall be issued for a 12-month period. Such period shall run from January 1 to December 31 of each year. Any new permit issued during the year shall begin on the date of issuance and shall end on December 31 of that year. The permit shall state the period for which the permit is issued, the name of the owner, the make of the vehicles, the vehicle identification numbers, and the current license numbers.

(Ord. No. 2012-47, § 1(27-26), 11-19-2012)

Sec. 16-168. Renewal.

(a) *Application.* An application for renewal of an existing permit shall be filed on or before November 15 for the renewal period covering the following calendar year. The application process shall be the same as specified in this article for initial permits.

(b) *Issuance.* The city secretary shall issue a nonemergency transfer service permit for each ambulance for which it has received a renewal application upon the applicant's filing of written proof of insurance as required in this article used in such business have been paid, upon each vehicle passing the inspection required by this article, and upon determination that all requirements of this article and all applicable state and federal statutes and regulations have been satisfied.

(c) *Denial.* If a permit has been suspended during the permit year, re-issuance of such permit will be reviewed by the city fire chief or his designee during December of the same year. The re-issuance of such permit shall be denied if the fire chief or his designee determines that the provisions of this article have not been met.

(Ord. No. 2012-47, § 1(27-27), 11-19-2012)

Sec. 16-169. Transferability.

A permit issued under this article shall be specific to both the permittee as well as the permitted vehicle, and shall not be transferable.

(Ord. No. 2012-47, § 1(27-28), 11-19-2012)

Sec. 16-170. Alterations of terms by city council.

The city council expressly reserves the right to modify, amend, change, or eliminate any of the provisions of any permit issued under this article, during the life of the permit, to:

(1) Eliminate or delegate any conditions that might prove obsolete or impractical; or

(2) Impose any additional conditions upon any owner as may be just and reasonable, and which are deemed necessary for the purpose of promoting adequate, efficient, and safe ambulance to the public.

(Ord. No. 2012-47, § 1(27-29), 11-19-2012)

Sec. 16-171. Requirements for business location.

If the business location of the ambulance service, firm or organization is located within the city limits, the building must be in compliance with all city ordinances and state and federal laws. Pursuant to this article, no such ambulance service, firm or organization can operate as its main place of business or a storage supply facility in a private residence. The city fire chief or his designee or police department has the right to inspect such locations as often as deemed necessary to ensure compliance with all provisions of this article. The refusal of any ambulance operator, with a business office located within the city limits to allow the city fire chief or his designee or police department to inspect such premises shall be considered a violation of this article and may be subject to forfeiture of the nonemergency ambulance permits.

(Ord. No. 2012-47, § 1(27-30), 11-19-2012)

Sec. 16-172. Suspension or revocation; appeal.

(a) In addition to the penalties as provided in section 1-14 for violations of this division, a nonemergency transfer service provider or any of its officers, agents and/or employees who violate any section of this article, including allowing drivers to operate or drive any vehicle while not properly licensed or while intoxicated/incapacitated, is subject to immediate suspension of its medical nonemergency transfer service permit to operate within the city limits by the city fire chief or his designee. Any violation of this division may subject the transfer service provider to suspension or revocation of its nonemergency transfer service permit. However, not less than ten days before any revocation or suspension for other than operating a vehicle while not properly licensed or while intoxicated/incapacitated, the owner shall be given written notice, by either personal delivery or certified mail to the permittee's address as shown on the permit application, and an opportunity to be heard before the city fire chief or his designee as to why the permit should not be revoked or suspended. No such notice or hearing shall be deemed necessary prior to the revocation of a permit for failure to maintain proper insurance as required. Additionally, the permittee shall notify the city of any state or federal investigation, or conviction of violation of any state or federal law, within ten days of such investigation or conviction.

(b) If the city fire chief or his designee's decision is not acceptable to the applicant or permittee he may, within ten days of that decision, file an appeal in writing with the city manager. During the pendency of the appeal, the permit shall be suspended. Such a written appeal shall set forth the specific grounds therefor. The city manager shall notify the appellant within ten days after the receipt of appeal as to the time and place of the hearing, which shall be within 30 days of receipt of such appeal. The determination of the city manager on any appeal pursuant to this division shall be final.

(c) Upon suspension or revocation of an ambulance permit, such medical transfer service shall cease operations in the city and no person shall permit such medical transfer service to continue such operations.

(Ord. No. 2012-47, § 1(27-31), 11-19-2012)

Chapter 17 RESERVED

Chapter 18 ENVIRONMENT [1]

ARTICLE I. - IN GENERAL

ARTICLE II. - OIL AND GAS WELLS AND PIPELINES

ARTICLE III. - NUISANCES

ARTICLE IV. - NOISE

ARTICLE V. - JUNKED OR ABANDONED VEHICLES

ARTICLE VI. - EROSION AND SEDIMENT CONTROL

ARTICLE VII. - DRAINAGE DESIGN

FOOTNOTE(S):

--- (**1**) ---

State Law reference— Sanitation and environmental quality, V.T.C.A., Health and Safety Code ch. 341 et seq.; natural resources, V.T.C.A., Natural Resources Code ch. 1 et seq.; parks and wildlife, V.T.C.A., Parks and Wildlife Code ch. 1 et seq. (Back)

ARTICLE I. IN GENERAL

Secs. 18-1—18-24. Reserved.

Secs. 18-1—18-24. Reserved.

ARTICLE II. OIL AND GAS WELLS AND PIPELINES [2]

DIVISION 1. - GENERALLY

DIVISION 2. - WELL AND SEISMIC ACTIVITIES PERMITS

DIVISION 3. - WELL OPERATION

DIVISION 4. - PIPELINE PERMITS

DIVISION 5. - ASSIGNMENTS

FOOTNOTE(S):

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State Law reference— Oil and gas, V.T.C.A., Natural Resources Code ch. 81 et seq.; lease of municipal oil, gas or mineral land, V.T.C.A., Local Government Code § 253.005; disposition of the public domain, oil

and gas, V.T.C.A., Natural Resources Code ch. 52; municipal regulation of exploration and development of mineral interests, V.T.C.A., Natural Resources Code § 92.007. (Back)

DIVISION 1. GENERALLY

Sec. 18-25. General summary regulation.

Sec. 18-26. Definitions.

Sec. 18-27. Penalties.

Sec. 18-28. Nonconforming wells; registration.

Sec. 18-29. Necessity of contract with surface owner.

Sec. 18-30. Location and setback requirements.

Sec. 18-31. Location and setback requirements for training well sites.

Sec. 18-32. Appeal from setback requirements.

Sec. 18-33. Substitute wells.

Secs. 18-34—18-52. Reserved.

Sec. 18-25. General summary regulation.

This article regulates the drilling, production, and operation of oil and gas wells, the exploration associated with such operations, and the transport of hydrocarbons or wastes associated with these operations, within the regulated area of the city.

(Ord. No. 2008-23, § 1(30-26), 9-2-2008)

Sec. 18-26. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. All technical or oil and gas industry words or phrases used in this article and not specifically defined herein or in the Texas Railroad Commission Rules for Oil, Gas and Geothermal Operations or Pipeline Safety Rules shall have the meaning customarily attributable thereto by prudent operators in the oil and gas industry.

Abandoned well means a well no longer in use, whether dry, inoperable or no longer producing.

Permittee means the person to whom a permit or supplemental permit is issued for the drilling, deepening, or operation of a well or pipeline, or seismic activities, under this article, and the person's administrators, executors, heirs, successors and assigns.

Pipeline or *pipeline system* means all parts of a pipeline or physical facilities through which gas, oil, waste, or hazardous liquid moves in transportation, including, but not limited to, pipes, valves, or other appurtenances connected to the pipeline.

Producing means the extraction of an amount of oil and gas from a well of such quantity and quality as to warrant from a commercial and economic standpoint the operation of the well, but in any event not less than 36 barrels within the preceding 36-month period.

Regulated area means all land within the corporate boundaries of the city.

Seismic activities means any geophysical or seismic testing or exploration, including any activity, operation or work using acoustic energy to evaluate subsurface strata. The term "seismic activities" includes all operations incident to and associated with that activity or construction.

Training well means any hole or bore otherwise meeting the definition of "well" but intended for the sole purpose of educating personnel and not for the purpose of extracting, exploring for, or ascertaining the existence of any oil, gas, liquid hydrocarbon or other mineral.

Training well site means any hole or bore otherwise meeting the definition of "well" but intended for the sole purpose of educating personnel and not for the purpose of extracting, exploring for, or ascertaining the existence of any oil, gas, liquid hydrocarbon or other mineral, and shall include all structures appurtenant thereto.

Well includes and means any hole or bore, to any sand, formation, strata or depth, which is drilled, bored, sunk, dug, or put down for the purpose of either exploring for or ascertaining the existence of any oil, gas, liquid hydrocarbon, or any of them, or for the purpose of producing and recovering any oil, gas, liquid hydrocarbon, or well bores for disposal of salt water or other oil and gas waste.

(Ord. No. 2008-23, § 1(30-27), 9-2-2008; Ord. No. 2012-41, § 2, 10-15-2012)

Sec. 18-27. Penalties.

Any violation of any of the terms of this article, whether denominated as unlawful or not, shall be deemed a misdemeanor.

(Ord. No. 2008-23, § 1(30-28), 9-2-2008)

Sec. 18-28. Nonconforming wells; registration.

All of the terms and provisions of this article shall be applicable to the operation of any well located within the regulated area of the city. Nonconforming wells shall be defined in this section as wells which have been fully drilled prior to the effective date of the ordinance from which this article is derived. If such wells are still producing, or if a request is submitted for a supplemental permit in accordance with sections 18-54 and 18-79, registration of such well shall be required in full conformity with this article. All such nonconforming wells shall be registered with the city within one year from the effective date of the ordinance from which this article is derived. The information required to register such preexisting well shall include all of the information required under sections 18-54 and/or 18-79, whichever is applicable. A filing fee in the amount as currently established or as hereafter adopted by resolution of the city council from time to time shall be required for each well registration. Failure to register an existing well, or to apply for a supplemental permit, shall constitute a violation of this article. No provision of this article may be construed as altering, abating, or superseding any provision of any lease, contract, unit agreement, or any other agreement which affects any land within the regulated area of the city.

(Ord. No. 2008-23, § 1(30-29), 9-2-2008)

Sec. 18-29. Necessity of contract with surface owner.

Neither this article nor any permit or supplemental permit issued under this article shall be interpreted to grant any right or license to the permittee to enter upon, use, or occupy in any respect for the drilling or operation of any well or pipeline on any surface land, except by the written consent of the surface owner, unless the permittee obtained such right through an oil or gas lease, or other contract; nor shall this article limit or prevent the free right of the owner to contract for the amount of damages, rights or privileges with respect to his own land and property.

(Ord. No. 2008-23, § 1(30-30), 9-2-2008)

Sec. 18-30. Location and setback requirements.

(a) A person commits an offense if the person causes or permits the drilling or deepening of any well, or the conducting of any seismic activities, within the regulated area that is nearer than 1,000 feet from

any residence, building, or other structure intended for human occupancy; or nearer than 1,000 feet from the location of any proposed residence, building, or other structure intended for human occupancy for which a valid construction permit has been issued and is in effect.

(b) A person commits an offense if the person causes or permits the drilling or deepening of any well, or the conducting of any seismic activities, that is nearer than 500 feet from any barn, building, cabana, garage, shack, shed, or other enclosed structure, or any public park, public athletic field, or any other publicly dedicated right-of-way.

(c) The provisions of this section shall not apply to a permittee seeking to deepen an existing well, provided such well has been registered and has received a supplemental permit as required by this article.

(d) The provisions of this section shall not prevent a person from seeking a renewal permit for a producing well, in accordance with section 18-57(c).

(e) No well shall be drilled, deepened or operated, or seismic activities conducted, within any existing or proposed roadway right-of-way. As used in this section, the term "roadway right-of-way" means that area within the boundaries of any easement or right-of-way for any highway, street or alley; the term "proposed roadway right-of-way" means any roadway right-of-way for which the city council and/or the city planning and zoning commission has designated, by official action, as a projected highway, street, alley, or other thoroughfare in the master development plan of the city, whether or not such roadway right-of-way has actually been platted or dedicated for public use at such time.

(Ord. No. 2008-23, § 1(30-31), 9-2-2008)

Sec. 18-31. Location and setback requirements for training well sites.

(a) A person commits an offense if the person places any training well site within the regulated area that is nearer than 500 feet from the location of any existing or proposed residence, church, public or private school, school, hospital, nursing home, or daycare center.

(b) A person commits an offense if the person places any training well site that is nearer than 150 feet from any barn, building, cabana, garage, shack, shed, or other enclosed structure, or any publicly dedicated right-of-way.

(c) A person commits an offense if the person places any training well site nearer than 350 feet from any public park or public athletic field.

(d) No training well shall be drilled, deepened or operated, or seismic activities conducted within any existing or proposed roadway right-of-way.

(e) A training well site may include classrooms and offices as part of the rig structure.

(f) Distances from the training well site to any building (not identified as being part of the rig structure), right-of-way, or activity used in this article shall be measured in a straight line from the nearest point of the building, right-of-way, or activity to the nearest point of the training well site.

(g) The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Proposed roadway right-of-way means any roadway right-of-way which the city council or the planning and zoning commission has designated by official action as a projected highway, street, alley, or other thoroughfare in the master development plan of the city, whether or not such roadway right-of-way has actually been dedicated for public use at such time.

Roadway right-of-way means that area within the boundaries of any easement or right-of-way for any highway, street or alley.

(Ord. No. 2012-41, § 3, 10-15-2012)

Sec. 18-32. Appeal from setback requirements.

(a) Whenever, owing to exceptional and extraordinary conditions, the literal enforcement of the setback requirements set forth in section 18-30 or 18-31 will result in a legal hardship or the inability to access or explore a mineral interest, the permittee asserting such legal hardship or inability to access or explore a mineral interest may request a variance from such setback requirements.

(b) A request for such variance must be made in writing and received by the city secretary. The city council shall conduct such hearing within 30 days from the date the request is received. The permittee seeking a variance under this section shall have the burden of showing that enforcement of the standards set forth in section 18-30 or 18-31 will result in a legal hardship or the inability to access or explore a mineral interest.

(c) If the city council finds that compliance with this article would prevent a permittee from accessing or exploring a mineral interest, then the city council may reduce the setback requirements as necessary to allow the permittee to access or explore such mineral interest.

(Ord. No. 2008-23, § 1(30-32), 9-2-2008; Ord. No. 2012-41, § 4, 10-15-2012)

Sec. 18-33. Substitute wells.

(a) Except as provided in subsection (b) of this section, no well or training well shall be drilled or deepened within the regulated area of the city without first securing a permit or supplemental permit from the city.

(b) If a permitted drilling well or actively producing registered well is abandoned due to mechanical failure, a substitute well may at any time be drilled, completed, operated and produced, in accordance with the regulations set forth in divisions 1 and 2 of this article. No substitute well provided for in this subsection shall be drilled to a deeper reservoir than the deepest productive reservoir of the well for which such substitute well is drilled, without the permittee first securing a supplemental permit as provided in sections 18-54 and 18-79

(c) The provisions of this section shall not prevent a well from being completed in more than one producing horizon; multiple completions in the same well bore are expressly authorized.

(Ord. No. 2008-23, § 1(30-33), 9-2-2008; Ord. No. 2012-41, § 5, 10-15-2012)

Secs. 18-34—18-52. Reserved.

DIVISION 2. WELL AND SEISMIC ACTIVITIES PERMITS

Sec. 18-53. Permit required to drill or deepen a well, or conduct seismic activities.

Sec. 18-54. Application and filing fee.

Sec. 18-55. Filing of application and notice.

Sec. 18-56. Granting or refusal of permit.

Sec. 18-57. Form and issuance of permit.

Sec. 18-58. Bond requirements.

Sec. 18-59. Release from bond.

Secs. 18-60—18-76. Reserved.

Sec. 18-53. Permit required to drill or deepen a well, or conduct seismic activities.

It shall be unlawful for any person acting either for himself or as an agent, employee, independent contractor, or servant of any other person to commence to drill or deepen a well or training well, or conduct seismic activities within the regulated area of the city, or to work upon or assist in any way in the prosecution or operation of any well or training well, without a permit for the drilling of a well or training well, a supplemental permit for the deepening of an existing well or training well, or a permit for seismic activities, having first been issued in accordance with the provisions of this article, except as provided in section 18-32(b) and (c).

(Ord. No. 2008-23, § 1(30-46), 9-2-2008; Ord. No. 2012-41, § 6, 10-15-2012)

Sec. 18-54. Application and filing fee.

(a) *Application.* Any person seeking to obtain a permit or supplemental permit to drill, deepen, operate a well, or conduct seismic activities within the regulated area of the city shall present an application therefor, in duplicate, to the city council, which application shall be in writing, addressed to the mayor, signed by the applicant or a person duly authorized to sign for the applicant, and shall state:

(1) The date of the application;

(2) The name and address of the applicant and, if the applicant is a corporation, the state of incorporation, and, if the applicant is a partnership, the names and addresses of the general partners;

(3) The particular lot and block number or tract in the city on which the proposed well or seismic activities is to be located and the exact location of such proposed well or seismic activities;

(4) The proposed depth of the well or seismic activities;

(5) The proposed complete casing program of the well or seismic activities (if applicable); and

(6) The specific number of acres allocated to the proposed well or seismic activities, as required by the state railroad commission.

(b) *Attachments.* Attached to the application for a permit shall be:

(1) A plat prepared by a duly registered surveyor showing the exact location of the proposed well or seismic activities with respect to the boundaries of the lot, block, or tract for which applicant has secured the rights from the owner to drill, deepen, or conduct seismic activities; a designation of the area owned or controlled by the applicant, and allocated to the proposed well or seismic activities, and the distances from the well location, or seismic activities, to all residences, commercial buildings and structures situated within the leased boundaries;

(2) A map showing the drill sites in relation to the nearest public roadways and the proposed route of ingress and egress by applicant to such proposed drill sites;

(3) A copy of the state railroad commission form W-1 (application to drill, deepen, plug back or re-enter) or a copy of the applicable state railroad commission form for conducting seismic activities;

(4) Copies of RRC Form H-15, a test on an inactive well more than 25 years old, from all wells within the regulated area which are operated by applicant (if applicable); and

(5) A copy of TNRCC-0051, "Depth of Usable Groundwater to be Protected."

(c) *Fee.* Each application for a permit or supplemental permit shall be accompanied a cashier's check in the amount as currently established or as hereafter adopted by resolution of the city council from time to time, made payable to the city, which shall be a filing fee to cover administrative, legal and consulting expenses incurred when considering such application. Each application shall be maintained by the city secretary as a part of the public records of the city.

(d) *Appearance.* The applicant or a personal representative of any applicant shall be present and appear before the city council at such time as the city council considers the application or any amendment thereto.

(e) *Training wells.* Subsections (a) through (d) of this section shall be applicable to training wells with the following exceptions:

(1) Subsection (a)(6) is not applicable; and

(2) The fee for an application for a permit to drill a training well shall be in an amount per training well site as currently established or as hereafter adopted by resolution of the city council from time to time, regardless of the number of wells placed within each training well site covered by such permit application; provided that any training wells covered by such permit must be completed within 12 months of issuance of such permit.

(Ord. No. 2008-23, § 1(30-47), 9-2-2008; Ord. No. 2012-41, § 7, 10-15-2012)

Sec. 18-55. Filing of application and notice.

(a) *Application.* An application for a permit or supplemental permit shall be filed with the city council for action in issuing or refusing to issue a permit.

(b) *Notice of filing.* Notice of the filing of each application shall be given by the applicant in the manner herein set out. Such notice shall be in words and figures, as follows:

"Notice is hereby given that _____, acting under and pursuant to the terms and provisions of an ordinance regulating the drilling, completion and operation of oil and gas wells, as well as any seismic activities conducted within the regulatory limits of the City of Tomball, Texas, being Ordinance No. _____, as amended, did on the _____ day of _____, 20_____, file with the city secretary of the City of Tomball an application to drill, complete and operate a well at Lot No. _____, Block No. _____ (or other appropriate description). City of Tomball, Texas, as per map filed of record in volume _____, page _____, plat records of Harris County, Texas (here the exact location of the proposed well/seismic activities shall be set out)."

(c) *Notice published.* The applicant shall cause such notice to be published, at the applicant's own expense, in every issue of the official newspaper of the city for ten days prior to the date of city council's consideration of such application. Proof of such publication shall be made by the printer or publisher of the newspaper by affidavit filed with the city council and shall be prima facie evidence of such publication.

(d) *Notice of public hearing published.* Notice of the time and place of the public hearing on an oil and gas or seismic activities permit shall be published in an official newspaper, or a newspaper of general circulation within the city, at least 15 days prior to the date of the hearing. Additionally, before the tenth day before the date of the hearing, written notice of such public hearing shall be sent to each owner, as indicated by the most recently approved city tax roll, of real property immediately adjacent to the property for which the oil and gas or seismic activities permit is requested.

(e) *Exceptions.* The city council, at a regular or special called meeting, may, upon written application of applicant, waive all or any part of such ten-day publication requirement and issue such permit in accordance with section 18-56, upon the showing of compliance with the following:

(1) Demonstration by applicant that such requirement would work an economic hardship upon applicant to delay the spudding-in of the well applied for in its application (when applicable);

(2) That it would be to the best interest of the city, under its police powers, to issue a permit without awaiting publication;

(3) Proof of filing and approval of a bond in the amount as currently established or as hereafter adopted by resolution of the city council from time to time;

(4) Demonstration by the applicant that the drilling of such well or conducting of seismic activities will not constitute a danger to the health, safety, morals, or welfare of the city and its inhabitants; and

(5) Payment of a fee in the amount as currently established or as hereafter adopted by resolution of the city council from time to time into the general revenue fund of the city to cover the cost of expediting such application, including early docketing by the city secretary, investigation by the city attorney and city staff, the calling of a special meeting of city council for a hearing on such written application of the applicant to waive publication, and an affirmative finding by city council that the requirements therein set forth have been met.

(f) *Issuance.* Upon the affirmative finding by the city council that the requirements of this section have been met, the city secretary shall be authorized to issue the applicant a permit in accordance with section 18-57 hereof.

(g) *Training wells.* The provisions of subsections (b) through (f) of this section shall not be applicable to application for a permit for a training well.

(Ord. No. 2008-23, § 1(30-48), 9-2-2008; Ord. No. 2012-41, § 8, 10-15-2012)

Sec. 18-56. Granting or refusal of permit.

If, after such application is filed pursuant to this article, it is found by the city council to comply in all respects with terms of this article, and the drilling, deepening or operation of such well or training well, or conducting of seismic activities, is not prohibited by the terms of this article, then the city council shall issue a permit for the drilling, deepening or operation of the well or training well, or conducting of seismic activities; provided, however, the city council shall have the power, and reserves the authority, to refuse any application for a permit when by reason of the location of the proposed well or training well or seismic activities, and the character and value of the improvements located on the lot or tract in question or adjacent thereto, and the use to which the land and surroundings are adapted for civic purpose, or for sanitary reasons, the drilling, deepening or operation of such well or training well, or conducting of seismic activities, would constitute a danger to either the health, safety, morals or welfare of the city and its inhabitants.

(Ord. No. 2008-23, § 1(30-49), 9-2-2008; Ord. No. 2012-41, § 9, 10-15-2012)

Sec. 18-57. Form and issuance of permit.

(a) Each permit issued under this article shall:

(1) By reference, have incorporated all provisions of this article with the same force and effect as if this article were copied verbatim in such permit;

(2) Specify definitely the location of the well, training well or seismic activities;

(3) Specify that drilling or seismic activities shall begin within 90 days from the date of the permit or such permit shall be forfeited; provided, however, such forfeiture shall not affect the right of applicant to apply for another permit; and

(4) Specify that such permit shall remain in full force and effect until said well is abandoned or seismic activities are completed, or one year, whichever is earlier. If applicable, specify the date for required renewal.

(b) Such permit shall not be issued until the provisions of this section have been met. Such permit, in duplicate originals, shall be signed by the city secretary and, prior to delivery to the permittee, shall be signed by the permittee. One original of the permit, duly executed, shall be delivered to the permittee and one original of the permit, duly executed, shall be retained by the city secretary and, when so filed, shall constitute the permittee's drilling, seismic, and operating license and the

contractual obligations of the permittee to comply with the terms of such permit, the bond hereafter mentioned, and this article.

(c) Any permit issued for a well, training well/training well site, or seismic activities under any ordinance of the city shall continue until said well, training well/training well site, or seismic activities are completed, or one year, whichever is earlier. Upon application of renewal of permit showing compliance with the terms of the original permit and the payment of a renewal fee as currently established or as hereafter adopted by resolution of the city council from time to time, the city council may renew for a one-year period any permit granted hereunder.

(Ord. No. 2008-23, § 1(30-50), 9-2-2008; Ord. No. 2012-41, § 10, 10-15-2012)

Sec. 18-58. Bond requirements.

(a) *Form and amount.* If the issuance of a permit is authorized, same shall not be issued until the applicant shall file with the city secretary a bond, executed by and between the permittee, as principal, and a corporate surety company licensed to do business in the state, as surety, and on the condition that the principal obligator shall drill, deepen and/or operate such well, or perform seismic activities, in accordance with the terms of this article and that the principal shall remedy any and all damages to all public utilities, roadways, drainage structures, and any other public property, including groundwater supply, and/or surface and subsurface pollution, occasioned in any manner by the drilling or operations of such well, or by the performance of seismic activities. Such bond shall run to the city for the benefit of the city and all persons concerned, shall be in a form to comply herewith, shall be in the amount as currently established or as hereafter adopted by resolution of the city council from time to time for each well for which a permit is requested, or for each seismic activity for which a permit is requested, and shall be approved by the city attorney.

(b) *Failure to keep.* Failure to keep such bond in full force and effect, in accordance with the terms of this division, shall be unlawful and shall be punishable in accordance herewith.

(c) *Exception.* The city council, with the approval of the city attorney, may waive the requirement for the surety bond described by this section, as to any permittee, when it is found and determined that such permittee is financially responsible and capable of meeting obligations for amounts in excess of the bond requirement. Upon such determination, the city council may allow the permittee to file, in lieu of any surety bond, a letter of acceptance binding and obligating such permittee to abide by the conditions prescribed in this section for surety bonds.

(d) This section shall not be applicable to the drilling of any training well.

(Ord. No. 2008-23, § 1(30-51), 9-2-2008; Ord. No. 2012-41, § 11, 10-15-2012)

Sec. 18-59. Release from bond.

When any permit shall terminate and become inoperative, as provided in this article, or if and when the permittee shall file with the city secretary written notice of his election to surrender his permit and abandon the premises covered thereby, then, if no claims under the bond are pending or have been filed within six months after such permit shall have terminated, become inoperative, or written notice of election to surrender has been filed, the city secretary shall return the bond filed by the permittee in connection with such permit. If claims are pending or are filed within such time, upon the satisfaction or defeat of such claims, such bond shall thereupon be returned to the permittee.

(Ord. No. 2008-23, § 1(30-52), 9-2-2008)

Secs. 18-60—18-76. Reserved.

DIVISION 3. WELL OPERATION

Sec. 18-77. Unlawful to permit escape of mud, etc.

Sec. 18-78. Remedial well work.

Sec. 18-79. Reworking a well, deeper drilling; supplemental permit required.

Sec. 18-80. Rules for drilling and producing operations for permit holder.

Sec. 18-81. Noise.

Sec. 18-82. Lighting.

Sec. 18-83. Buffering.

Secs. 18-84—18-103. Reserved.

Sec. 18-77. Unlawful to permit escape of mud, etc.

It shall be unlawful for any person to permit to escape any mud, water, oil, slush, saltwater or other waste matter related to the drilling, deepening or operating of any well, training well, or seismic activities, onto any adjoining lots upon which permittee does not have leases or other contractual rights to use the surface, or upon leases not owned by permittee or into the alleys, streets, gutters, sewers, or ditches of the city. Within 60 days after the completion or abandonment of any well, training well, or seismic activities, the mud and other similar matter and materials used in connection with the drilling, deepening and operations thereon shall be removed from the premises, and all pits, holes, ruts, and depressions in and around such well or seismic activities locations shall be smoothed out, leveled, and filled.

(Ord. No. 2008-23, § 1(30-66), 9-2-2008; Ord. No. 2012-41, § 12, 10-15-2012)

Sec. 18-78. Remedial well work.

Any person operating any well or training well within the regulated area of the city may perform any remedial well work operations in the original well bore, except drilling deeper, without a permit for such operations, provided the operator complies with all safety rules set forth in this article and no additional filing fees will be required for such work.

(Ord. No. 2008-23, § 1(30-67), 9-2-2008; Ord. No. 2012-41, § 13, 10-15-2012)

Sec. 18-79. Reworking a well, deeper drilling; supplemental permit required.

(a) Once any well or training well has either been completed as an oil or gas producer, abandoned or the permit for such work has expired, it shall be unlawful for any person to enter such well or training well for the purposes of reworking or to drill such well or training well to a greater depth than that reached in prior drilling operations or drill outside the scope of the original well bore without the permittee of such well filing an application with the city secretary and obtaining a supplemental permit which shall contain, in addition to all the requirements heretofore set forth, additional information specifying:

    (1) The then condition of the well or training well and the casing therein;

    (2) The depth to which it is proposed that such well or training well will be deepened; and

    (3) The proposed casing program to be used in connection with such proposed deepening operations.

(b) In any deeper drilling or deepening operations, the permittee shall comply with all other provisions contained in this article and applicable to the drilling, completion, and operation of a well or training well.

(c) A person commits an offense if the person intentional or knowingly reactivates a plugged or abandoned well or training well or re-enters an existing well or training well for purposes of deepening or reworking without a permit from the city.

(Ord. No. 2008-23, § 1(30-68), 9-2-2008; Ord. No. 2012-41, § 14, 10-15-2012)

Sec. 18-80. Rules for drilling and producing operations for permit holder.

All persons engaged in the drilling and operation of wells within the regulated area of the city shall comply with the following rules and regulations:

(1) In order to enable the holder of each permit to move or transport oil, gas, water, or other waste products within the city limits, the holder of each permit issued under this article for the drilling and operation of a well within the city is hereby granted rights-of-way and easements on, over, under, along or across city streets, sidewalks and alleys for the purpose of constructing, laying, maintaining, operating, repairing, replacing and removing pipelines so long as production or operations may be continued; provided, however, each permittee shall:

a. Not interfere with or damage existing water, sewer or gas lines or the facilities of public utilities located on, under, or across the course of such rights-of-way;

b. Furnish the city secretary with a plat showing the location of such pipelines at least ten days prior to installation;

c. Provide construction plans and specifications to the city for approval;

d. Provide pipeline markers at each and every public street crossing, indicating the owner's name, identifying the product in such pipeline, and a 24-hour telephone number;

e. Construct such lines or cause same to be constructed out of new or reconditioned steel pipe buried to a minimum depth of 36 inches below the surface at each and every point;

f. Ensure that if plastic pipe is used that the internal pressure of such line will not exceed 60 pounds per square inch and shall have at least 36 inches of cover. All plastic lines shall be encased under or crossing improved roadway surfaces from right-of-way line to right-of-way line. Where plastic pipe is installed longitudinally, a durable metal wire shall be concurrently installed or other means shall be provided for detection purposes;

g. Ensure that public street crossings shall be either bored or tunneled. Pipeline installations across roadways may be encased or unencased. Bore holes or tunnels shall not exceed the diameter of the pipe by more than one inch, and shall extend from the top of the backslope to the top of the backslope or five feet beyond the face of the curb. Generally, underground line crossings should be encased in the interest of safety, protection for the pipeline and roadway, and for access to the pipeline. Casing shall consist of steel pipe with welded joints and seams and shall be designed to support the load of the roadway and superimposed loads thereon. All lines shall be enclosed in an adequately vented casing. For enclosed lines, the minimum total clear depth of cover for casing pipe shall be 30 inches;

h. Ensure that casing shall consist of smooth wall pipe with welded joints and seams, and shall be continuous provided, however, that welded steel pipeline crossings may be installed without encasement provided such pipelines conform with 49 CFR 192, transportation of natural and other gas by pipeline, or 49 CFR 195, transportation of liquids by pipeline as applicable:

1. For unencased high-pressure gas or liquid petroleum lines, the minimum depth of cover shall be 60 inches under the pavement surface and a minimum of 48 inches under ditches. Exceptions may be authorized by the city to reduce the specified depth of cover where the pipeline is protected by a reinforced concrete slab;

2. Where encasement is not employed, the welded steel carrier pipe shall provide sufficient strength to withstand the internal design pressure and the dead and live loads of the pavement structure and traffic. Additional protective measures should include heavier wall thickness and/or higher factor of safety in design, adequate coating and wrapping, cathodic protection, and other measures as required by 49, CFR 192, or 49 CFR 195;

3. The minimum length of the additional protection as set forth in subsection (1)h.2 of this section shall be the same as that required by encasement;

i. Control traffic in work zones to conform to applicable specifications of the Texas Manual on Uniform Traffic Control Devices for Streets and Highways;

j. Ensure that operations in city rights-of-way shall be performed in such a manner that all equipment and excavated material are kept off the pavement at all times;

k. Grade, level, and restore such property to same surface condition, as nearly as practicable, as existed prior to the beginning of operations;

l. After completion of pipeline, provide to the city for its files a copy of the record drawings; and

m. Ensure that any future adjustment or relocation of pipeline installations which become necessary because of utility or roadway construction shall be accomplished without cost to the city.

(2) Any violation of the laws, rules, regulations, or requirements of any state or federal regulatory body having jurisdiction in reference to drilling, completing, equipping, operating, producing, transporting product or abandoning a well or related appurtenances, shall be a violation of this division and shall be punishable in accordance with the provisions of this article.

(3) No person engaged in drilling or operating any well shall permit gas to escape or be vented into the air unless said gas is flared and burned. All gas flared or burned within the city must be done in such a manner so as not to constitute a fire hazard to any property.

(4) It shall be unlawful for any person to use, operate or maintain any drilling or reworking machinery on any location for a period longer than 60 days after the completion of any well or any reworking project. All engines shall be equipped with effective mufflers.

(5) Two dual-controlled, fluid-operated blowout preventers with working pressures equal to or greater than the maximum anticipated wellhead pressures shall be used for all drilling or completion operations involving the use of drill pipe or tubing after the surface casing has been set. The mechanical operation of the preventers shall be checked every 24 hours and shall be tested with pump pressures with enough frequency to ensure good working order at all times.

(6) Only portable steel slush, reserve and shale tanks for mud, water or shale shall be permitted in connection with the drilling and reworking operations of any well.

(7) Any person drilling or operating a well shall dispose of all saltwater or other waste produced by such well in a manner that will not contaminate or pollute surface and subsurface resources. No earthen-walled evaporation-type saltwater disposal pit shall be allowed within the city.

(8) No well shall be drilled or reworked within the city without the bore hole being filled at all times with a drilling fluid of a weight and viscosity that a reasonable, prudent operator would use to keep the well under control at all times.

(9) It shall be unlawful for any person in connection with the drilling or reworking operations of any well within the city to conduct any swabbing operations or to take or complete any drill stem test, except during daylight hours. Drill stem tests may be conducted only if the well effluent during the test is produced through an adequate gas separator to storage tanks, and effluent remaining in the drill pipe at the time the tool is closed and flushed to the surface by circulating drilling fluid down the annulus and up the drill pipe.

(10) Whenever any well within the city limits is abandoned, it shall be the obligation of the permittee to plug such well in accordance with the rules and regulations of the state railroad commission and to take any and all additional provisions or precautionary measures prescribed by the state or the state railroad commission in connection with abandonment and plugging of the well. The city shall be notified of any action in this regard. It shall be the further obligation of the permittee or the operator of the well to cut the surface casing off at least six feet below the surface of the ground and to place at least a 25-foot cement plug in the top of the casing and to weld the top of the casing completely shut. The resulting hole in the ground must be completely filled to the surface of the ground and duly tamped. A copy of RRC Form W-3 (plugging record) and Form W-15 (cementing report) shall be filed with the city secretary.

(11) It shall be unlawful for any person to use, construct, or operate, in connection with each producing well within the city, any storage tanks, except to the extent of two steel tanks for the storage of liquid hydrocarbon not exceeding 500-barrel capacity each, and so constructed and maintained as to be vapor tight and each surrounded with an earthen firewall at such distance from the tanks as will, under any circumstances, hold and retain at least the maximum capacity of such tank or tanks. A permittee may use, construct and operate a steel conventional separator, and such other steel tanks and appurtenances as are necessary for treating oil with each of such facilities to be so constructed and maintained as to be vaportight. Each gas separator shall be equipped with both a regulation pressure relief safety valve and a bursting head.

(12) Any person may install equipment for the purpose of secondary recovery, pressure maintenance operations, or automatic lease operations, provided such person complies with all the safety requirements of this article and the state railroad commission.

(13) It shall be unlawful for any person within the regulated are of the city to install any fired vessel or open flame within 300 feet of any well or storage tank.

(14) All wellheads, tank batteries, pumping units and equipment appurtenant thereto within the city, which are located within a densely populated area so designated by the city council or within 200 feet of a public street, shall be adequately protected with an intruder-proof fence; provided, however, any wellhead, tank battery, pumping unit, or equipment appurtenant thereto, which is located on any lease tract or farm and is fenced in its entirety will require no additional protection other than that commonly used by prudent operators. Fences to prevent entry shall be approved by a representative designated by the city council.

(15) The premises shall be kept in a clean and sanitary condition, free from rubbish of every character, at all times during drilling operations and as long thereafter as the well is being produced therefrom. All permittees' premises shall be kept clear of high grass, weeds, and combustible trash or any other rubbish or debris that might constitute a fire hazard within a radius of 300 feet around any oil tank, producing wells, or to the limits of the premises, whichever is the lesser.

(16) No prime movers shall be permitted within the corporate limits of the city for the purpose of pumping wells, except electric motors.

(17) Printed signs reading "Danger No Smoking Allowed" or similar words shall be posted in conspicuous places on each well, storage tank or battery of tanks within the regulated area of the city.

(18) Material, equipment, tools or pipe used for either drilling or producing operations at the well shall not be delivered to or removed from the well site, except between the hours of 7:00 a.m. and 7:00 p.m. on any day, except in case of an emergency.

(19) It shall be unlawful to block, encumber, or close any street or alley in any pipeline, drilling or production operation, except by an ordinance duly passed by the city council permitting the temporary blocking or closing of a street or alley.

(Ord. No. 2008-23, § 1(30-69), 9-2-2008)

Sec. 18-81. Noise.

No on-site activity associated with a training well site shall produce a sound greater than 65 dB when measured from any property boundary, except when adjacent to a right-of-way. Every two years, the owner or operator of any training well site shall demonstrate, via certified, independent third party, no on-site activity is producing a sound greater than 65 dB when measured from any property boundary, except when adjacent to a right-of-way.

(Ord. No. 2012-41, § 15, 10-15-2012)

Sec. 18-82. Lighting.

All lighting shall be directed downward and shielded so as to prevent the direct illumination of public rights-of-way and adjacent properties and to minimize glare. Lighting shall be limited to a maximum of one footcandle along all property lines. Every two years, the owner or operator of any training well site shall demonstrate, via a certified, independent, third party, that lighting along all property lines does not exceed one footcandle.

(Ord. No. 2012-41, § 15, 10-15-2012)

Sec. 18-83. Buffering.

If the base of a training well site is visible from a right-of-way or adjacent properties, a minimum six-foot opaque screen shall be constructed so as to visually screen the training well site from view.

(Ord. No. 2012-41, § 15, 10-15-2012)

Secs. 18-84—18-103. Reserved.

DIVISION 4. PIPELINE PERMITS

Sec. 18-104. Application and filing fee.

Sec. 18-105. Granting or refusal of permit.

Sec. 18-106. Form and issuance of permit.

Sec. 18-107. Bond requirements.

Sec. 18-108. Release from bond.

Sec. 18-109. Rules for pipeline operations.

Secs. 18-110—18-131. Reserved.

Sec. 18-104. Application and filing fee.

All persons engaged in the movement or transport of oil, gas, water, or other waste products within the city limits, and who are not holders of a valid permit, may be granted a permit by the city council for pipeline crossings or parallel installation within public right-of-way or easements for the purpose of constructing, laying, maintaining, operating, repairing, replacing and removing pipelines; provided, however, each applicant shall:

(1) File with the city secretary for city approval a permit application with a location plan and construction details and specifications;

(2) Provide copies of RRC Form H-15 "Test on an Inactive Well More Than 25 Years Old" from all wells within the regulated area operated by the applicant;

(3) File and obtain approval of a bond in the amount as currently established or as hereafter adopted by resolution of the city council from time to time;

(4) Provide with each application a cashier's check in the amount as currently established or as hereafter adopted by resolution of the city council from time to time made payable to the city, which shall be a filing fee. Each application shall be maintained by the city secretary as a part of the public records of the city;

(5) Ensure that the applicant or a representative of applicant shall be present and appear before the city council at such time as the city council considers the application or any amendment thereto.

(Ord. No. 2008-23, § 1(30-91), 9-2-2008)

Sec. 18-105. Granting or refusal of permit.

If, after such application is filed pursuant to this article, it is found by the city council to comply in all respects with terms of this article, the city council finds that such applicant has complied in all respects with the terms of this article, then the city council shall issue a permit for the construction and operation of the pipeline applied for; provided, however, the city council shall have the power, and reserves the authority, to refuse any application for a permit when by reason of the location of the proposed pipeline and the character and value of the improvements located on the property in question or adjacent thereto, and the use to which the land and surroundings are adapted for civic purpose, or for other reasons, the pipeline would constitute a danger to either the health, safety, morals or welfare of the city and its inhabitants.

(Ord. No. 2008-23, § 1(30-92), 9-2-2008)

Sec. 18-106. Form and issuance of permit.

(a) Each permit issued under this article shall:

(1) By reference, have incorporated all provisions of this article with the same force and effect as if this article were copied verbatim in such permit;

(2) Specify definitely the location of the pipeline;

(3) Specify that construction shall begin within 90 days from the date of the permit or such permit shall be forfeited; provided, however, such forfeiture shall not affect the right of applicant to apply for another permit; and

(4) Specify that such permit shall remain in full force and effect until said pipeline is abandoned.

(b) Such permit shall not be issued until the provisions of section 18-107 are complied with. Such permit, in duplicate originals, shall be signed by the city secretary and, prior to delivery to the permittee, shall be signed by the permittee. One original of the permit, duly executed, shall be delivered to the permittee and one duly executed original of the permit shall be retained by the city secretary and shall constitute the permittee's license and the contractual obligations of the permittee to comply with the terms of such permit, the bond mentioned in section 18-107, and this article.

(Ord. No. 2008-23, § 1(30-93), 9-2-2008)

Sec. 18-107. Bond requirements.

(a) *Form and amount.* If the issuance of a permit is authorized, same shall not be issued until the applicant shall file with the city secretary a bond, executed by and between the permittee, as

principal, and a corporate surety company licensed to do business in the state, as surety, conditioned that the principal obligator shall construct and operate such pipeline in accordance with the terms of this article; that the principal shall remedy any and all damages to all public utilities, roadways, drainage structures, and any other public property, including groundwater supply, and/or surface and subsurface pollution, occasioned in any manner by the applicant's operation of such pipeline. Such bond shall run to the city, for the benefit of the city and all persons concerned, shall be in a form to comply herewith, and shall be in the amount as currently established or as hereafter adopted by resolution of the city council from time to time for each pipeline upon which a permit is applied for, and shall be approved by the city attorney.

(b) *Failure to keep.* Failure to keep such bond in full force and effect, in accordance with the terms of this article, shall be unlawful and shall be punishable in accordance herewith.

(c) *Exception.* The city council, with the approval of the city attorney, may waive the requirement for the surety bond described in this section, as to any permittee, if it is found and determined that such permittee is financially responsible and capable of meeting obligations for amounts in excess of the bond requirement, and may allow the permittee to file, in lieu of any surety bond, a letter of acceptance which binds and obligates such permittee to abide by the conditions prescribed in this section for surety bonds.

(Ord. No. 2008-23, § 1(30-94), 9-2-2008)

Sec. 18-108. Release from bond.

When any permit shall terminate and become inoperative, as provided in this article, or if and when the permittee shall file with the city secretary written notice of his election to surrender his permit and abandon the premises covered thereby, then if no claims under the bond are pending or have been filed within six months after such permit shall have terminated, have become inoperative, or a written notice of election to surrender has been filed, the city secretary shall return the bond furnished by the permittee in connection with such permit. If claims are pending or are filed within such time, upon the satisfaction or defeat of such claims, such bond shall thereupon be returned to the permittee.

(Ord. No. 2008-23, § 1(30-95), 9-2-2008)

Sec. 18-109. Rules for pipeline operations.

All persons engaged in pipeline maintenance and operations within the corporate limits of the city shall comply with all rules and regulations as provided under section 18-80 and any violation of any of the terms of this Code, whether denominated as unlawful or not, shall be deemed a misdemeanor.

(Ord. No. 2008-23, § 1(30-96), 9-2-2008)

Secs. 18-110—18-131. Reserved.

DIVISION 5. ASSIGNMENTS

Sec. 18-132. Sale, transfer or conveyance of assets.

Secs. 18-133—18-162. Reserved.

Sec. 18-132. Sale, transfer or conveyance of assets.

A sale, transfer or conveyance of properties owned by an operator is not complete unless the acquiring person has on file with the city an approved form of financial security covering the requirements of this article. The existing bond or alternate form of financial security remains in effect and the prior operator of the property remains responsible for compliance with all ordinances, rules, and regulations of the city covering the transferred assets until the city determines that the assets are covered by proper financial security and the acquiring person has assumed full responsibility for the properties, in accordance with all ordinances, rules and regulations of the city.

(Ord. No. 2008-23, § 1(30-100), 9-2-2008)

Secs. 18-133—18-162. Reserved.

ARTICLE III. NUISANCES [3]

Sec. 18-163. Definitions.

Sec. 18-164. Illustrative enumeration.

Sec. 18-165. Prohibited.

Sec. 18-166. Owners required to keep lots of free of weeds, etc.; procedure for abatement.

Sec. 18-167. Release of pollutants.

Sec. 18-168. Tire storage and mosquito control.

Secs. 18-169—18-185. Reserved.

Sec. 18-163. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Nuisance means any unlawful act, or omitting to perform a duty, or the suffering or permitting any condition or thing to be or exist, which act, omission, condition or thing either:

(1) Injures or endangers the comfort, repose, health or safety of others;

(2) Offends decency;

(3) Is offensive to the senses;

(4) Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage;

(5) In any way renders other persons insecure in life or the use of property; or

(6) Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others.

(Code 1978, § 15-1; Code 1993, § 30-156)

Sec. 18-164. Illustrative enumeration.

The maintaining, using, placing, depositing, leaving or permitting to be or remain on any public or private property of any of the following items, conditions or actions are hereby declared to be and

constitute a nuisance; provided, however, this enumeration shall not be deemed or construed to be conclusive, limiting or restrictive:

(1) Noxious weeds and other rank vegetation.

(2) Accumulation of rubbish, trash, refuse, junk and other abandoned materials, metals, lumber or other things.

(3) Any condition which provides harborage for rats, mice, snakes and other vermin.

(4) Any building or other structure which is in such a dilapidated condition that it is unfit for human habitation, or kept in such an unsanitary condition that it is a menace to the health of people residing in the vicinity thereof, or presents a more than ordinarily dangerous fire hazard in the vicinity where it is located.

(5) All unnecessary or unauthorized noises and annoying vibrations, including animal noises.

(6) All disagreeable or obnoxious odors and stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stenches.

(7) The carcasses of animals or fowl not disposed of within a reasonable time after death.

(8) The pollution of any public well or cistern, stream, lake, canal, or body of water by sewage, dead animals, creamery, industrial wastes or other substances.

(9) Any building, structure or other place or location where any activity which is in violation of local, state or federal law is conducted, performed or maintained.

(10) Any accumulation of stagnant water permitted or maintained on any lot or piece of ground.

(11) Dense smoke, noxious fumes, gas, soot or cinders, in unreasonable quantities.

(Code 1978, § 15-2; Code 1993, § 30-157)

Sec. 18-165. Prohibited.

It shall be unlawful for any person to cause, permit, maintain or allow the creation or maintenance of a nuisance.

(Code 1978, § 15-3; Code 1993, § 30-158)

Sec. 18-166. Owners required to keep lots of free of weeds, etc.; procedure for abatement.

(a) *Rubbish, brush, stagnant water, sinks, filth, carrion, or any other unwholesome, unsightly, unsanitary, or objectionable matter.* Every owner, part owner, joint owner, or owner of any interest whatever, hereinafter referred to as the owner, in real estate which is located within a subdivision, either recorded or unrecorded, within the city; or which real estate is open acreage located within 200 feet of any residence, if same be occupied, or commercial establishment; or within 200 feet of any dedicated street right-of-way, shall keep such property free of rubbish, brush, stagnant water, sinks, filth, carrion or any other unwholesome, unsightly, unsanitary or objectionable matter.

(b) *Weeds prohibited.* Every owner shall keep his property free from weeds, in accordance with the following regulations:

(1) *Weeds defined.* The term "weeds" means uncultivated vegetable growth or matter, including grasses, which has grown to a height of more than 12 inches. Cultivated crops, plants, or grasses must be farmed or managed in accordance with customary area practices. Property or parcels which have an area coverage of 50 percent or more in wildflowers or wildflower seed heads are not included within this definition until such time as seeds have matured following the

final blooming of the majority of the plants, but in no case later than August 1 of the calendar year.

(2) *Parcels larger than four acres.* Parcels larger than four acres which have prohibited weeds present must be cut (i.e., the weeds must be controlled,) for a distance of 25 feet back from the curb, or the edge of the road surface if there is no curb.

(3) *Defenses to prosecution.* It shall be a defense to prosecution for violation of this subsection (b) if the owner can prove that:

a. Weather conditions have totally prevented cutting or controlling the weeds; or

b. The property or parcel has been mowed or the weeds controlled within the previous 30 days.

(c) *Work or improvements by city; notice.* If the owner of property in the city does not comply with this section within ten days of notice of a violation, the city may do the work or make the improvements required and pay for the work done or improvements made and charge the expenses to the owner of the property. The notice of violation must be given:

(1) Personally to the owner in writing;

(2) By letter addressed to the owner at the owner's post office address; or

(3) By publication at least twice within ten consecutive days if personal service cannot be obtained or the owner's post office address is unknown.

(d) *Assessment of expenses; lien.* The city council may assess expenses incurred against the real estate on which the work is done or improvements made. To obtain a lien against the property, the city manager, municipal health authority, or other city official designated by the city manager must file a statement of expenses with the county clerk. The lien obtained by the city is security for the expenditures made with interest accruing at the rate of ten percent on the amount due from the date of payment by the city. The lien is inferior only to:

(1) Tax liens; and

(2) Liens for street improvements.

(e) *Foreclosure.* The city council may bring a suit for foreclosure in the name of the city to recover the expenditures and interest due.

(f) *Statement of expenses.* The statement of expenses or a certified copy of the statement is prima facie proof of the expenses incurred by the city in doing the work or making the improvements.

(g) *Remedy cumulative.* The remedy provided by this section is in addition to other remedies available to the city.

(Code 1978, § 15-9; Code 1993, § 30-159; Ord. No. 92-12, § 2.0, 7-20-1992; Ord. No. 2012-03, § 1, 4-2-2012; Ord. No. 2012-13, § 1, 6-18-2012)

Sec. 18-167. Release of pollutants.

All industrial or commercial endeavors are hereby prohibited from releasing particulate matter, eye irritants, radiation, or odorous matter into the atmosphere or water. All industries are hereby prohibited from posing fire, explosion or chemical hazards, or producing toxic and/or noxious matter.

(Code 1978, § 5-11; Code 1993, § 14-11)

Sec. 18-168. Tire storage and mosquito control.

(a) Every person in possession of land within the corporate limits of the city, either as owner, purchaser, under contract, lessee, tenant or licensee, upon which land there are situated one or more tires, shall

keep such tires inside a building or other structure, which building or structure must be capable of preventing the tires from gathering water, or allowing weeds to grow around such tires. Each tire must be stored in such a manner that in the determination of the city the tires are not capable of breeding mosquitoes or other vermin.

(b) Every person in possession of land within the corporate limits of the city, either as owner, purchaser, under contract, lessee, tenant or licensee, is hereby prohibited from having, storing or otherwise keeping any vessels or vats capable of containing or holding liquids, which vessel or vat in the sole determination of the city would be a breeding place for mosquitoes or other vermin.

(c) Anyone who stores tires or has tires, or other vessels or vats, without having complied with the provisions of this section or who shall violate any of the provisions of this section shall be guilty of an offense. Cumulative with any other remedy available to the city, the city may proceed against such violator by injunction or other appropriate remedy to correct any violations of this section.

(Code 1978, § 13-4; Code 1993, § 42-1)

Secs. 18-169—18-185. Reserved.

FOOTNOTE(S):

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State Law reference— Authority to define, prohibit, V.T.C.A., Local Government Code § 217.042. (Back)

ARTICLE IV. NOISE [4]

Sec. 18-186. Definitions.

Sec. 18-187. General prohibition.

Sec. 18-188. Noisy vehicles generally.

Sec. 18-189. Amplified sound.

Sec. 18-190. Noisy animals and birds.

Sec. 18-191. Maximum permissible sound levels.

Sec. 18-192. Maximum sound levels.

Sec. 18-193. Method of sound measurement.

Sec. 18-194. Permit required for use of outdoor sound amplification equipment.

Sec. 18-195. Defenses.

Sec. 18-196. Penalty.

Secs. 18-197—18-215. Reserved.

Sec. 18-186. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Daytime hours means the hours from 7:00 a.m. on one day and 10:00 p.m. the same day.

dB(A) means the intensity of a sound expressed in decibels.

Emergency means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage or loss that demands immediate action.

Emergency work means any work performed for the purpose of:

(1) Preventing or alleviating the physical trauma or property damage threatened or caused by an emergency;

(2) Restoring property to a safe condition following a fire, accident, or natural disaster;

(3) Protecting persons or property from exposure to danger; or

(4) Restoring public utilities.

Nighttime hours means the hours between 10:01 p.m. on one day and 6:59 a.m. the following day.

Nonresidential property means any real property that is not included in the definition of residential property as defined in this section. Without limitation, the term "nonresidential property" includes properties that have been developed other than as residential properties, properties that are undeveloped, and properties that are devoted to public purposes, such as public streets and parks.

Property line means, with respect to single occupancy properties, the line along the ground surface and its vertical extension that separates the real property owned, leased, or occupied by one person from that owned, leased, or occupied by another person. With respect to shared occupancy properties, the term "property line" means the imaginary line that represents the legal limits of occupancy of any person who owns, leases, or otherwise occupies an apartment, condominium, hotel or motel room, office, or any other type of occupancy from that of other occupants.

Residential property means any real property developed and used for human habitation that contains living facilities, including provisions for sleeping, eating, cooking, and sanitation, unless such premises are actually occupied and used primarily for purposes other than human habitation.

Sound amplifying equipment means any machine or device for the amplification of the human voice, music or other sound. The term "sound amplifying equipment" as used in this article shall not be construed as including standard automobile radios when used and heard only by occupants of the vehicle in which installed or warning devices on authorized emergency vehicles or horns or other warning devices on other vehicles used only for traffic or human safety purposes.

Sound nuisance means any sound that either exceeds the maximum permitted sound levels specified in section 18-191, or for purposes of sections 18-188, 18-189, and 18-190, otherwise unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others.

Sound truck means any vehicle, whether motor-driven, horse-driven or otherwise powered, having mounted thereon, or attached thereto, any sound amplifying equipment.

(Ord. No. 2009-01, § 2(30-181), 1-19-2009)

Sec. 18-187. General prohibition.

(a) A person commits an offense if the person makes, continues, or causes to be made or continued any loud, unnecessary or unusual noise that annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others. In determining whether a noise is loud, unnecessary or unusual, the following factors shall be considered: time of day; proximity to residential structures; whether the noise is recurrent or constant; the volume and intensity of the noise; whether the noise has been

enhanced in volume or range by any type of electronic or mechanical means; and whether the noise is subject to being controlled without unreasonable effort or expense to the creator thereof.

(b) A person commits an offense if he makes, assists in making, permits, continues, causes to be made or continued, or permits the continuance of any sound that either exceeds the maximum permitted sound levels specified in section 18-191 or, for purposes of sections 18-188, 18-189 and 18-190, otherwise unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others.

(c) The acts enumerated in the following sections of this article, among others, are declared to be loud, disturbing and unnecessary noises in violation of this article, but such enumeration shall not be deemed to be exclusive.

(Ord. No. 2009-01, § 2(30-182), 1-19-2009)

Sec. 18-188. Noisy vehicles generally.

The use of any motor vehicle so out of repair, so loaded, or so noisy that it creates loud and unreasonable grating, grinding, rattling or any other loud and unreasonable sound is hereby prohibited and declared to be unlawful.

(Ord. No. 2009-01, § 2(30-183), 1-19-2009)

Sec. 18-189. Amplified sound.

(a) A person commits an offense if the person makes, assists in making, permits, continues, causes to be made or continued, or permits the continuance of any sound using any sound amplifier that is part of or connected to any speaker system, radio, stereo receiver, compact disc player, cassette tape player, microphone, or any other sound source, when operated:

(1) In such a manner as to disturb the peace, quiet, and comfort of the neighboring inhabitants; or

(2) At any time with louder volume than is necessary for convenient hearing for persons who are in the vehicle or within the property or premises in which such sound amplifier is operated and who are voluntary listeners thereto.

The operation of any such sound amplifier in such a manner as to be plainly audible at a distance of 50 feet from a vehicle shall be presumed to be violative of this section. The operation of any such sound amplifier in such a manner that bass sounds are plainly audible at a distance of 50 feet from the property line of a property or premises in which the amplification is located shall be presumed to be violative of this section.

(b) It is an affirmative defense to prosecution under this section that the sound source is a motor vehicle and that:

(1) The motor vehicle is a mobile sound stage or studio that is being used on a stationary basis at a location not situated upon any street for the purpose of providing sound, during daytime hours, for an event or function; and

(2) The use is in compliance with all other provisions of this article, including but not limited to section 18-194

(Ord. No. 2009-01, § 2(30-184), 1-19-2009)

Sec. 18-190. Noisy animals and birds.

(a) A person commits an offense if the person keeps an animal or bird that causes or makes frequent or long and continued sound that unreasonably disturbs, injures, or endangers the comfort, repose,

health, peace, or safety of ordinary, reasonable persons of normal sensibilities and ordinary tastes, habits, and modes of living who reside in the vicinity thereof.

(b) The keeping of a noisy animal or bird is hereby prohibited and declared to be a sound nuisance in violation of this article, regardless of whether the sound so created by the animal or bird is within the permissible levels specified in section 18-191

(Ord. No. 2009-01, § 2(30-185), 1-19-2009)

Sec. 18-191. Maximum permissible sound levels.

(a) In addition to the violations established by the preceding sections of this article, no person shall conduct, permit, or allow any activity or sound source to produce a sound discernible at any location beyond the property lines of the property on which the sound is being generated that when measured as provided in section 18-192 exceeds the applicable dB(A) level listed below for the property on which the sound is received:

(1) *Residential property.*

a. 65 dB(A) during daytime hours.

b. 58 dB(A) during nighttime hours.

(2) *Nonresidential property.* 68 dB(A) at all times.

Any sound that exceeds the dB(A) levels set forth in this section under the conditions and measurement criteria set forth in this article is a violation of this article. Evidence that an activity or sound source produces a sound that exceeds the dB(A) levels specified in this section shall be prima facie evidence of a sound nuisance that unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others in violation of this article.

(b) Regardless of the measurable dB(A) level established in subsections (a)(1) and (2) of this section and measured as provided in section 18-192, the generator of any sound of such a nature as to cause persons occupying or using any property other than the property upon which the sound is being generated to be aware of sympathetic vibrations or resonance caused by the sound shall also be prima facie evidence of a sound that unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others in violation of this article.

(Ord. No. 2009-01, § 2(30-186), 1-19-2009)

Sec. 18-192. Maximum sound levels.

(a) All industrial or commercial businesses within the city limits shall conform to the maximum sound levels as set out in this section. Sound levels shall be measured with a sound level meter and an associated octave band analyzer, both manufactured in accordance with the specifications prescribed by the American Standards Association. Noise emission from any commercial or industrial operation shall not cause sound pressure levels greater than those listed in the table below, measured at any point at the commercial or industrial operation's boundary, either at ground level or at a habitable elevation, whichever is more restrictive.

Octave Band Center Frequency (HZ)	Sound Pressure Level (dB)*
31.5	85

63	71
125	61
250	52
500	47
1000	44
2000	39
4000	37
8000	35

*re: 0.0002 microbar

(b) The sound level produced by any industry shall not exceed the limits established in this section.

(Code 1978, § 5-8; Code 1993, § 14-8; Ord. No. 2009-01, § 1, 1-19-2009)

Sec. 18-193. Method of sound measurement.

Whenever portions of this article prohibit sound over a certain decibel limit, measurement shall be made with a Type 1 or Type 2 calibrated sound level meter utilizing the A-weighting scale and the slow meter response as specified by the American National Standards Institute (ANSI S1.4-1984/85A). Measurements recorded shall be taken so as to provide a proper representation of the sound being measured. The microphone of the meter shall be positioned so as not to create any unnatural enhancement or diminution of the measured sound. A windscreen for the microphone shall be used. Measurements of sound generated shall be taken from the property line of the nonresidential property or residential property where the sound is received to the source of the sound.

(Ord. No. 2009-01, § 2(30-187), 1-19-2009)

Sec. 18-194. Permit required for use of outdoor sound amplification equipment.

(a) No person shall use or cause to be used any loudspeaker, loudspeaker system, sound amplifier, or any other machine or device that produces, reproduces, or amplifies sound outside of buildings or other enclosed structures in a manner that exceeds the levels specified in section 18-191, when measured from the property where the sound is being received, without first obtaining a permit to do so. The permit shall be granted only for the amplification of music or human speech, or both. The permit:

(1) May be obtained by making application to the director of the city department so designated by the city manager.

(2) Requires payment of a fee as currently established or as hereafter adopted by resolution of the city council from time to time for the administrative costs of issuing the permit or a sworn statement of inability to pay the fee.

(3) Is valid for one 14-hour period between the hours of 8:00 a.m. and 10:00 p.m.

(4) Shall not be issued to the same or any other person for the same location more than twice during any 30-day period. In the case of a sound truck, location shall relate to the area traversed by the truck in one day.

(5) Shall not authorize, allow, or otherwise permit the production, reproduction, or amplification of sound that exceeds 75 dB(A) when measured from the property line of the nearest receiving property.

(b) The permit application required to be filed pursuant to this section shall contain the following information:

(1) The date of the application and the date and hours for which the permit is requested.

(2) The name and address of the applicant.

(3) The name and address of the person who will have charge of the sound amplifying equipment.

(4) The purpose for which the sound equipment will be used.

(5) The address and a description of the location where the sound equipment will be used.

(6) A description of the type of sound amplifying equipment to be used.

(Ord. No. 2009-01, § 2(30-188), 1-19-2009)

Sec. 18-195. Defenses.

The following defenses shall apply to any offense established in this article:

(1) The emission of any sound was for the purpose of alerting persons to the existence of an emergency, danger, or attempted crime.

(2) The sound was produced by an authorized emergency vehicle.

(3) The sound was produced by emergency work.

(4) The sound was generated:

a. At a lawfully scheduled stadium event;

b. By a parade and spectators and participants on the parade route during a lawful parade;

c. By spectators and participants at lawfully scheduled amphitheater event;

d. By patrons and participants using cannons and gunfire during historical battle re-enactments for which a pyrotechnic permit was obtained and the explosives were inspected by the fire marshal;

e. By a pyrotechnic display that was inspected and approved by the fire marshal; or

f. By spectators and participants of an event, fun run, race, festival, fiesta, or concert that was sponsored or cosponsored by the city.

(5) The sound was produced by the erection, excavation, construction, or demolition of any building or structure, including the use of any necessary tools or equipment, conducted between the hours of 7:00 a.m. and 8:00 p.m., which activity did not produce a sound exceeding 85 dB(A) when measured from the property line of the residential property where the sound was being received.

(6) The sound was produced by aircraft in flight or in operation at an airport, or railroad equipment in operation on railroad rights-of-way.

(7) The sound was produced by operating or permitting the operation of any mechanically powered saw, drill, sander, router, grinder, lawn or garden tool, lawnmower, or any other similar device used between the hours of 7:00 a.m. and 8:00 p.m., provided the device did not produce a sound exceeding 85 dB(A) when measured from the property line of the nearest residential property where the sound was being received and was used for the maintenance or upkeep of the property on which it was operated.

(8) The sound was generated as authorized under the terms of a permit issued under section 18-194

(9) The sound was produced by the operation of any air conditioning unit that did not produce a sound exceeding 65 dB(A) on residential property or 75 dB(A) on nonresidential property, when measured at or near 15 feet from the air conditioning unit producing the sound being measured.

(10) The sound was produced by church bells or church chimes when used as part of a religious observance or service during daytime hours, provided the sound did not cumulatively exceed five minutes, duration in any one-hour period.

(11) The sound was produced during daytime hours by activities conducted on public parks, public playgrounds, and public or private school grounds, including, but not limited to, school athletic and school entertainment events.

(Ord. No. 2009-01, § 2(30-189), 1-19-2009)

Sec. 18-196. Penalty.

Any person who intentionally, knowingly, recklessly, or with criminal negligence violates any provision of this article is guilty of an offense. Each hour or portion thereof in which any violation shall occur shall constitute a separate offense.

(Ord. No. 2009-01, § 2(30-190), 1-19-2009)

Secs. 18-197—18-215. Reserved.

FOOTNOTE(S):

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State Law reference— Presumption of unlawful noise, V.T.C.A., Penal Code § 42.01(c). (Back)

ARTICLE V. JUNKED OR ABANDONED VEHICLES [5]

Sec. 18-216. Definitions.

Sec. 18-217. Exceptions.

Sec. 18-218. Administration and enforcement.

Sec. 18-219. Prohibition.

Sec. 18-220. Declaration of nuisance.

Sec. 18-221. Notice to remove—From private property.

Sec. 18-222. Same—From public property.

Sec. 18-223. Hearing.

Sec. 18-224. Duty to abate.

Sec. 18-225. Court order to abate.

Sec. 18-226. Removal of vehicle; impoundment; claim.

Sec. 18-227. Sale, disposal of vehicles—Junked.

Sec. 18-228. Same—Abandoned.

Sec. 18-229. Notice to state.

Sec. 18-230. Vehicles not to be made operable.

Secs. 18-231—18-253. Reserved.

Sec. 18-216. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned vehicle means a motor vehicle that is inoperable and over five years old and is left unattended on public property for more than 48 hours, or a motor vehicle that has remained illegally parked on public property for a period of more than 48 hours, or a motor vehicle that has remained on private property without the consent of the owner or person in control of the property for more than 48 hours, or a motor vehicle left unattended on the rights-of-way of any designated county, state or federal highway within the city in excess of 48 hours or in excess of 24 hours on any turnpike project constructed and maintained by the state turnpike authority.

Demolisher means any person whose business is to convert a motor vehicle into processed scrap or scrap metal, or otherwise to wreck or dismantle a motor vehicle.

Garagekeeper means any owner or operator of a parking place or establishment, motor vehicle storage facility, or any establishment for the servicing, repair or maintenance of motor vehicles.

Junked vehicle means a motor vehicle as defined in V.T.C.A., Transportation Code § 683.071.

(1) The term "junked vehicle" means a vehicle that is self-propelled and does not have lawfully attached to it:

  a. An unexpired license plate; and

  b. A valid motor vehicle inspection certificate.

(2) The term "junked vehicle" also includes:

  a. Wrecked, dismantled or partially dismantled, or discarded; or

  b. Inoperable and has remained inoperable for more than:

    1. 72 consecutive hours, if the vehicle is on public property; or

    2. 30 consecutive days, if the vehicle is on private property.

Motor vehicle means any motor vehicle subject to registration pursuant to the state's Certificate of Title Act, V.T.C.A., Transportation Code ch. 501.

Storage facility means a garage, parking lot or any type of facility or establishment for the servicing, repairing, storing or parking of motor vehicles.

(Code 1978, § 12-1; Code 1993, § 30-211)

Sec. 18-217. Exceptions.

The provisions of this article shall not apply to:

(1) A vehicle or part thereof which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property;

(2) A vehicle or part thereof which is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or junkyard; or

(3) Unlicensed, operable or inoperable antique and special interest vehicles stored by a collector on his property; provided that the vehicles and the outdoor storage areas are maintained in such a manner that they do not constitute a health hazard and are screened from ordinary public view by means of a fence, rapidly growing trees, shrubbery, or other appropriate means.

(Code 1978, § 12-2; Code 1993, § 30-212)

State law reference— Similar provisions, V.T.C.A., Transportation Code § 683.077.

Sec. 18-218. Administration and enforcement.

The police department, by and through its regular full-time officers, may administer the provisions of this article and enter upon private property for the purposes specified in this article to examine vehicles or parts thereof, to obtain information as to the identity of vehicles and to remove or cause the removal of a vehicle or parts thereof declared to be a nuisance pursuant to this article, except that the removal of vehicles or parts thereof from property may be by any other duly authorized person. The municipal court shall have authority to issue all orders necessary to enforce this article.

(Code 1978, § 12-3; Code 1993, § 30-213)

Sec. 18-219. Prohibition.

It shall be unlawful for any person to leave or permit to remain upon public or private property, except as otherwise provided in this article, within the city, any abandoned or junked vehicle or parts or portion thereof for any period of time in excess of ten days.

(Code 1978, § 12-4; Code 1993, § 30-214)

Sec. 18-220. Declaration of nuisance.

Junked or abandoned vehicles which are located in any place where they are visible from a public place or public right-of-way are detrimental to the safety and welfare of the general public, tending to reduce the value of private property, to invite vandalism, to create fire hazards, to constitute an attractive nuisance creating a hazard to the health and safety of minors, and are detrimental to the economic welfare of the city, by producing urban blight which is adverse to the maintenance and continuing development of the city, and such vehicles are therefore declared to be a public nuisance.

(Code 1978, § 12-5; Code 1993, § 30-215)

State law reference— Declaration of nuisance, V.T.C.A., Transportation Code § 683.072.

Sec. 18-221. Notice to remove—From private property.

Whenever it is brought to the attention of the chief of police that a nuisance under the provisions of this article exists in the city, he shall give or cause to be given to the person maintaining or suspected of maintaining such nuisance, in writing, a ten-day notice, stating the nature of the public nuisance on private property and that it must be removed and abated within ten days, and, further, that a request for a hearing must be made by such person before the expiration of such ten-day period. The notice required by this section shall be mailed, by certified mail, with a five-day return requested, to the last known registered owner of the junked motor vehicle, and lienholder of record, and the owner or occupant of the private premises whereupon such public nuisance exists. If the notice is returned undelivered by the United States Postal Service, official action to abate the nuisance shall be continued to a date not less than ten days from the date of such return.

(Code 1978, § 12-6; Code 1993, § 30-216)

Sec. 18-222. Same—From public property.

Whenever it is brought to the attention of the chief of police that a nuisance under the provisions of this article exists in the city, he shall give or cause to be given to the person maintaining or suspected of maintaining such nuisance, in writing, a ten-day notice, stating the nature of such nuisance on public property or on a public right-of-way and that it must be removed or abated within ten days, and, further, that a request for a hearing must be made by the owner or occupant of such public property or the owner or occupant of the premises adjacent to the public right-of-way whereon such nuisance exists before the expiration of such ten-day period. The notice required by this section shall be mailed, by certified mail, with a five-day return requested, to the last known registered owner of the junked motor vehicle, any lienholder of record, and to the owner or occupant of the public premises or to the owner or occupant of the premises adjacent to the public right-of-way on which the public nuisance exists. If the notice is returned undelivered by the United States Postal Service, official action to abate such nuisance shall be continued to a date not less than ten days from the date of such return.

(Code 1978, § 12-7; Code 1993, § 30-217)

Sec. 18-223. Hearing.

A public hearing prior to the removal of the vehicle or part thereof as a public nuisance may be held before the municipal court when such a hearing is requested by the owner or occupant of the public or private premises adjacent to the public right-of-way on which such vehicle is located, within ten days after service of notice to abate the nuisance. Any resolution or order requiring the removal of a vehicle or part thereof shall include a description of the vehicle and the correct identification number and license number of the vehicle, if available at the site.

(Code 1978, § 12-8; Code 1993, § 30-218)

Sec. 18-224. Duty to abate.

If the owner or occupant of the premises upon which a nuisance under the provisions of this article exists does not request a hearing as provided by this article, it shall be his duty to comply with the provisions of the notice given him and to abate such nuisance within ten days after the date of the receipt of such notice.

(Code 1978, § 12-9; Code 1993, § 30-219)

Sec. 18-225. Court order to abate.

(a) After the hearing provided for in this article, the municipal court shall determine whether or not a nuisance exists under the provisions of this article. If a nuisance is found to exist, the city council shall order the owner or occupant of the premises upon which such nuisance is located to abate the same within ten days from the date of such order.

(b) It shall be unlawful for any person to whom such order is given to fail or refuse to comply therewith and to remove the abandoned or junked vehicle within such period of time.

(Code 1978, § 12-10; Code 1993, § 30-220)

Sec. 18-226. Removal of vehicle; impoundment; claim.

Within ten days after notice has been delivered to the owner or occupant of the premises on which an abandoned or junked vehicle is located, if a hearing is not requested, or, if a hearing is requested, within ten days after an order requiring the removal of such vehicle has been served upon or delivered to the owner or occupant of the premises on which such vehicle is located, the chief of police or members of the police department acting under the direction of the chief of police may, if the nuisance has not been abated, remove or cause to be removed such vehicle to a suitable city storage area designated by the chief of police. Such vehicle shall be stored in such storage area for a period of not less than ten days, during which period any party owning or claiming any right, title or interest therein shall be entitled to claim possession of same by the payment to the city of the actual cost of the city in abating such nuisance. The chief of police may, in such cases, if he deems it necessary, require such person to post bond as currently established or as hereafter adopted by resolution of the city council from time to time, conditioned that such person shall not use the vehicle to create another nuisance in the city.

(Code 1978, § 12-11; Code 1993, § 30-221)

Sec. 18-227. Sale, disposal of vehicles—Junked.

(a) When any junked vehicle has remained in the storage area provided in section 18-226 for not less than 20 days, it shall be the duty of the chief of police to dispose of the same by removal to a scrap yard or by sale to a demolisher for the highest bid or offer received therefor or to remove the same to any suitable site operated by the city for processing as scrap or salvage.

(b) Out of the proceeds of the sale of a junked vehicle under the provisions of this section, the chief of police shall pay for the cost of removal and storage thereof and the balance, if any, shall be paid to the person entitled thereto.

(c) If there is not a bid or offer for the vehicle, the chief of police may dispose of the same by causing it to be demolished or removed to a place provided by the city council, or by permitting it to be removed by a demolisher who is willing to do so for the benefit of the junk or parts he can salvage.

(Code 1978, § 12-12; Code 1993, § 30-222)

Sec. 18-228. Same—Abandoned.

If an abandoned motor vehicle has not been reclaimed as provided by V.T.C.A., Transportation Code § 683.012, the police department may sell the vehicle at a public auction. Proper notice of the public auction shall be given, and, in the case of a garagekeeper's lien, the garagekeeper shall be notified of the time and place of the auction. The purchaser of the motor vehicle takes title to the motor vehicle free and clear of all liens and claims of ownership, shall receive a sales receipt from the police department, and is entitled to register the purchased vehicle and receive a certificate of title. From the proceeds of the sale of an abandoned motor vehicle, the police department shall reimburse itself for the expenses of the auction, the costs of towing, preserving, and storing the vehicle that resulted from placing the abandoned motor

vehicle in custody, and all notice and publication costs incurred under V.T.C.A., Transportation Code § 683.012. Any remainder from the proceeds of a sale shall be held for the owner of the vehicle or entitled lienholder for 90 days and then shall be deposited in a special fund that shall remain available for the payment of auction, towing, preserving, storage, and all notice and publication costs that result from placing another abandoned vehicle in custody, if the proceeds from a sale of another abandoned motor vehicle are insufficient to meet these expenses and costs. The city may transfer the amount in the special fund that exceeds $1,000.00 from the special fund to the city's general revenue account to be used by the police department.

(Code 1978, § 12-12; Code 1993, § 30-223)

Sec. 18-229. Notice to state.

Notice shall be given to the state department of highways and public transportation within five days after the date of removal of a vehicle under the provisions of this article, identifying the vehicle or part thereof.

(Code 1978, § 12-13; Code 1993, § 30-224)

Sec. 18-230. Vehicles not to be made operable.

After a vehicle has been removed in accordance with or under the provisions of this article, it shall not be reconstructed or made operable.

(Code 1978, § 12-14; Code 1993, § 30-225)

Secs. 18-231—18-253. Reserved.

FOOTNOTE(S):

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State Law reference— Abandoned motor vehicles, V.T.C.A., Transportation Code ch. 683. (Back)

ARTICLE VI. EROSION AND SEDIMENT CONTROL [6]

Sec. 18-254. Purpose.

Sec. 18-255. Definitions.

Sec. 18-256. Permit required.

Sec. 18-257. Review and approval.

Sec. 18-258. Erosion and sediment control plan.

Sec. 18-259. Design requirements.

Sec. 18-260. Inspection.

Sec. 18-261. Enforcement.

Secs. 18-262—18-285. Reserved.

Sec. 18-254. Purpose.

The purpose of this article is to reduce erosion during the construction process by implementing and enforcing erosion and sediment control management guidelines. The provisions of this article are cumulative and in addition to other regulations or rules of the city that may be applicable to the development of property.

(Ord. No. 2009-30, § 1(38-50), 10-19-2009)

Sec. 18-255. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Clearing means any activity which removes the vegetative surface cover.

Drainageway means any channel that conveys stormwater runoff throughout the site.

Erosion and sediment control plan means a set of plans prepared by or under the direction of a licensed professional engineer indicating the specific measures and sequencing to be used controlling sediment and erosion on a development site including, before, during and after construction.

Erosion control means measures that prevent erosion.

Grading means excavation or fill of material, including the resulting conditions thereof.

Perimeter means the area of a lot or tract of land that is 30 feet wide and parallel to and adjacent to the property lines of the lot or tract of land.

Perimeter control means a barrier that prevents sediment from leaving a site by filtering sediment-laden runoff or diverting it to a sediment trap or basin.

Phasing means clearing a parcel of land in distinct phases, with the stabilization of each phase completed before the clearing of the next.

Sediment control means measures that prevent eroded sediment from leaving the site.

Site means a parcel of land, or a contiguous combination thereof, where grading work is performed as a single unified operation.

Site development permit means a permit issued by the city for which the construction or alteration of ground improvements and structures for the control of erosion, runoff and grading.

Stabilization means the use of practices that prevent exposed soil from eroding.

Start of construction means the first land disturbing activity associated with a development, including land preparation such as clearing, grading and filling; installation of streets and walkways; excavation for basements, footings, piers or foundations; erection of temporary forms; and installation of accessory buildings such as garages.

Watercourse means any natural or artificial body of surface water, including, but not limited to, bayous, channels, creeks, lakes, ponds, rivers, sloughs and streams defined by a bed and banks.

Waterway means a channel that directs stormwater runoff to a watercourse or to the public storm drain.

(Ord. No. 2009-30, § 1(38-51), 10-19-2009)

Sec. 18-256. Permit required.

(a) No person shall be granted a site development permit for land disturbing activity that would require the uncovering of 5,000 or more square feet without the approval of an erosion and sediment control plan by the city engineer.

(b) No site development permit is required, however, for the following activities:

(1) Any emergency activity that is immediately necessary for the protection of life, property or natural resources.

(2) Existing nursery and agricultural operations conducted as a permitted main or accessory use.

(3) Any activities on a lot less than one acre in area and used for single-family or two-family residential purposes only.

(c) Each application shall bear the names, addresses and contact numbers of the owners and developers of the site, and of any consulting firm retained by the applicant, together with the name of the applicant's principal contact at such firm, and shall be accompanied by a filing fee.

(d) Each application shall include a statement that any land clearing, construction, or development involving the movement of earth shall be in accordance with the erosion and sediment control plan.

(e) The applicant shall file with city a faithful performance bond, letter of credit, or other improvement security in an amount deemed sufficient by the city engineer to cover all costs of improvements, landscaping, and maintenance of improvements for such period as specified by the city, and engineering and inspection costs to cover the cost of failure or repair of improvements installed on the site.

(Ord. No. 2009-30, § 1(38-52), 10-19-2009)

Sec. 18-257. Review and approval.

(a) The city engineer will review each application for a site development permit to determine its conformance with the provisions of this article. Within 30 days after receiving an application, the city engineer shall, in writing:

(1) Approve the permit application;

(2) Approve the permit application subject to such reasonable conditions as may be necessary to secure substantially the objectives of this regulation, and issue the permit subject to these conditions; or

(3) Disapprove the permit application, indicating the deficiencies and the procedure for submitting a revised application and/or submission.

(b) Failure of the city engineer to act on original or revised applications within 30 days of receipt shall authorize the applicant to proceed in accordance with the plans as filed unless such time is extended by agreement between the applicant and the city engineer. Pending preparation and approval of a revised plan, development activities shall be allowed to proceed in accordance with conditions established by the city engineer.

(c) Any permit issued under this article shall expire six months following its issuance; provided, however, that the city engineer may extend a permit to complete work substantially completed under that permit.

(Ord. No. 2009-30, § 1(38-53), 10-19-2009)

Sec. 18-258. Erosion and sediment control plan.

(a) The erosion and sediment control plan shall include:

(1) A natural resources map identifying soils, forest cover, and resources protected under other chapters of this Code.

(2) The map shall be at a scale no smaller than one inch equals 100 feet.

(3) The map of the perimeter of the trees to remain, including a tree survey showing the location, diameter, and name of all trees with eight-inch caliper or more measured three feet from the ground.

(4) A sequence of construction of the development site, including stripping and clearing, rough grading, construction of utilities, infrastructure, and buildings, and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, and the sequence of clearing, installation of temporary erosion and sediment measures, and establishment of permanent vegetation.

(5) All erosion and sediment control measures necessary to meet the objectives of this article throughout all phases of construction and permanently, after completion of development of the site. Depending upon the complexity of the project, the drafting of intermediate plans may be required at the close of each season.

(6) Seeding mixtures and rates, types of sod, method of seedbed preparation, expected seeding dates, type and rate of lime and fertilizer application, and kind and quantity of mulching for both temporary and permanent vegetative control measures.

(7) Provisions for maintenance of control facilities, including easements and estimates of the cost of maintenance.

(8) Identification of the representative for site activities.

(b) Modifications to the plan.

(1) Major amendments of the erosion and sediment control plan shall be submitted to the city engineer and shall be processed and approved, or disapproved, in the same manner as the original plans.

(2) Field modifications of a minor nature may be authorized by the city engineer by written authorization to the permittee.

(Ord. No. 2009-30, § 1(38-54), 10-19-2009)

Sec. 18-259. Design requirements.

(a) *Generally.* Grading, erosion control practices, sediment control practices, and waterway crossings shall meet the design criteria set forth in the most recent version of the Stormwater Management Handbook for Construction Activities, City of Houston, Harris County, and HCFCD, 2006 edition, and shall be adequate to prevent transportation of sediment from the site to the satisfaction of the city engineer.

(b) *Clearing and grading.*

(1) Clearing and grading of natural resources, such as forests, wetlands and floodplains, shall not be permitted, except when in compliance all other chapters of this Code. These standards are cumulative of other federal, state, and local jurisdictional requirements.

(2) Clearing techniques that retain natural vegetation and retain natural drainage patterns, as described in the Stormwater Management Handbook for Construction Activities, City of Houston, Harris County, and HCFCD, 2006 edition, shall be used to the satisfaction of city engineer.

(3) Phasing shall be required on all sites disturbing greater than 30 acres, with the size of each phase to be established at plan review and as approved by the city engineer.

(4) Clearing, except that necessary to establish sediment control devices, shall not begin until all sediment control devices have been installed and have been stabilized.

(5) Cut and fill slopes shall be no greater than 2:1, except as approved by the city engineer to meet other community or environmental objectives.

(c) *Erosion control.*

(1) Soil must be stabilized within five days of clearing or inactivity in construction.

(2) If vegetative erosion control methods, such as seeding, have not become established within two weeks, the city engineer may require that the site be reseeded, or that a nonvegetative option be employed.

(3) On steep slopes or in drainageways, special techniques that meet the design criteria outlined in the Stormwater Management Handbook for Construction Activities, City of Houston, Harris County, and HCFCD, 2006 edition, shall be used to ensure stabilization.

(4) Soil stockpiles must be stabilized or covered at the end of each work-day.

(5) At the close of the construction season, the entire site must be stabilized, using a heavy mulch layer, or another method that does not require germination to control erosion.

(6) Techniques shall be employed to prevent the blowing of dust or sediment from the site.

(7) Techniques that divert upland runoff past disturbed slopes shall be employed.

(d) *Sediment controls.*

(1) Sediment controls shall be provided in the form of settling basins or sediment traps or tanks, and perimeter controls.

(2) Where possible, settling basins shall be designed in a manner that allows adaptation to provide long-term stormwater management.

(3) Adjacent properties shall be protected by the use of a vegetated buffer strip, in combination with perimeter controls.

(e) *Waterways and watercourses.*

(1) When a wet watercourse must be crossed regularly during construction, a temporary stream crossing shall be provided.

(2) When in-channel work is conducted, the channel shall be stabilized before, during and after work.

(3) All on-site stormwater conveyance channels shall be designed according to the criteria outlined in the Stormwater Management Handbook for Construction Activities, City of Houston, Harris County, and HCFCD, 2006 edition.

(4) Stabilization adequate to prevent erosion shall be provided at the outlets of all pipes and paved channels.

(f) *Construction site access.*

(1) A temporary access road shall be provided at all sites.

(2) Other measures may be required at the discretion of the city engineer in order to ensure that sediment is not tracked onto public streets by construction vehicles or washed into storm drains.

(Ord. No. 2009-30, § 1(38-55), 10-19-2009)

Sec. 18-260. Inspection.

(a) The city engineer or his designated agent shall make inspections as hereinafter required and shall either approve that portion of the work completed or shall notify the permittee wherein the work fails

to comply with the erosion and sediment control plan as approved. Plans for grading, stripping, excavating, and filling work bearing the stamp of approval of the city engineer shall be maintained at the site during the progress of the work. In order to obtain inspections, the permittee shall notify the city engineer at least two working days before the following:

(1) Start of construction;

(2) Erosion and sediment control measures are in place and stabilized;

(3) Site clearing has been completed;

(4) Rough grading has been completed;

(5) Final grading has been completed;

(6) Close of the construction season; and

(7) Final landscaping.

(b) The permittee or his agent shall make regular inspections of all control measures in accordance with the inspection schedule outlined on the approved erosion and sediment control plans. The purpose of such inspections will be to determine the overall effectiveness of the control plan, and the need for additional control measures. All inspections shall be documented in written form and submitted to the city engineer at the time interval specified in the approved permit.

(c) The city engineer or his designated agent shall enter the property of the applicant as deemed necessary to make regular inspections to ensure the validity of the reports filed under subsection (b) of this section.

(Ord. No. 2009-30, § 1(38-56), 10-19-2009)

Sec. 18-261. Enforcement.

(a) *Stop work order; revocation of permit.*

(1) The city engineer may issue a stop work order for any clearing or tree removal activity being conducted without a permit required by this article.

(2) In the event that any person holding a site development permit pursuant to this article violates the terms of the permit, or implements site development in such a manner as to materially adversely affect the health, welfare, or safety of persons residing or working in the neighborhood or development site so as to be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood, the city engineer may suspend or revoke the site development permit.

(b) *Violation and penalties.*

(1) No person shall construct, enlarge, alter, repair, or maintain any grading, excavation, or fill, or cause the same to be done, contrary to or in violation of any terms of this article.

(2) A person commits an offense if the person intentionally or knowingly clears land or removes trees, or causes the clearing of land or removal of trees, without a permit for such clearing of land or removal of trees required by this article.

(3) A person commits an offense if the person intentionally or knowingly clears land or removes trees, or causes the clearing of land or removal of trees, in violation of the terms of a permit issued under this article.

(4) Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor.

(Ord. No. 2009-30, § 1(38-57), 10-19-2009)

Secs. 18-262—18-285. Reserved.

FOOTNOTE(S):

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State Law reference— Soil and water conservation, V.T.C.A., Agriculture Code ch. 201; emergency management, V.T.C.A., Government Code ch. 418; city-county water control, V.T.C.A., Local Government Code §§ 411.002, 411.003; Flood Control and Insurance Act, V.T.C.A., Water Code § 16.311 et seq.; local rules, V.T.C.A., Water Code § 16.318. (Back)

ARTICLE VII. DRAINAGE DESIGN

Sec. 18-286. Stormwater drainage system design.

Sec. 18-286. Stormwater drainage system design.

Drainage facilities shall be designed and constructed in accordance with all federal, state, and local rules and regulations, including the City of Tomball Minimum Standards for Stormwater Drainage System Design Manual. The City of Tomball Minimum Standards for Stormwater Drainage System Design Manual shall be adopted or amended by resolution of the city council and a copy shall be maintained in the office of the city secretary.

(Ord. No. 2011-17, § 1, 8-15-2011)

Chapter 19 RESERVED

Chapter 20 FIRE PREVENTION AND PROTECTION [1]

ARTICLE I. - IN GENERAL

ARTICLE II. - FIRE CODE

ARTICLE III. - STANDARDS FOR INSTALLATION OF FIRE SPRINKLER SYSTEMS

ARTICLE IV. - FIRE LANES

ARTICLE V. - ARSON REWARDS

FOOTNOTE(S):

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Charter reference— City fire department, § 7.06. (Back)

State Law reference— Public safety, V.T.C.A., Local Government Code ch. 341 et seq.; safety, V.T.C.A., Health and Safety Code ch. 751 et seq. (Back)

ARTICLE I. IN GENERAL

Secs. 20-1—20-24. Reserved.

Secs. 20-1—20-24. Reserved.

ARTICLE II. FIRE CODE

Sec. 20-25. International Fire Code adopted.

Sec. 20-26. Life Safety Code, NFPA 101.

Sec. 20-27. Gas flare fires.

Sec. 20-28. Amendments to the 2012 International Fire Code.

Secs. 20-29—20-46. Reserved.

Sec. 20-25. International Fire Code adopted.

For the purpose of providing regulations consistent with nationally recognized practices for the reasonable protection of life and property from the hazards of fire, the city hereby adopts the International Fire Code, 2012 edition, hereinafter sometimes referred to as the "code," with appendix chapters B through J, as published by the International Code Council, Inc., except such portions as are deleted or amended by this article, and the same are hereby adopted and incorporated as fully as if set out at length herein. One copy of the code is now filed in the office of the city secretary. From the date on which the ordinance from which this article is derived shall take effect, the provisions thereof shall be controlling within the limits of the city and its extraterritorial jurisdiction.

(Code 1993, § 34-71; Ord. No. 2006-01, § 3, 3-6-2006; Ord. No. 2008-03, § 1(34-71), 3-3-2008; Ord. No. 2014-11, § 1(34-71), 5-5-2014)

Sec. 20-26. Life Safety Code, NFPA 101.

The NFPA 101, 2012 edition, as published by the National Fire Protection Association, Inc., and as amended herein, is hereby adopted in its entirety with the listed exceptions. A copy of said Life Safety Code is attached to the ordinance from which this article is derived and made a part hereof for all purposes, an authentic copy of which has been filed with the city secretary.

(Ord. No. 2008-03, § 1(34-71a), 3-3-2008; Ord. No. 2014-11, § 1(34-71a), 5-5-2014)

Sec. 20-27. Gas flare fires.

It shall be unlawful for any person to allow gas flares to burn within the city.

(Code 1993, § 34-73; Ord. No. 2006-01, § 3, 3-6-2006; Ord. No. 2008-03, § 1(34-73), 3-3-2008; Ord. No. 2014-11, § 1(34-73), 5-5-2014)

Sec. 20-28. Amendments to the 2012 International Fire Code.

(a) Section 102.7 of the fire code adopted in section 20-27 is hereby amended to provide as follows:

102.7 Referenced codes and standards. The codes and standards referenced in this code shall be those that are listed in chapter 80 and such codes and standards shall be considered part of the requirements of this code to the prescribed extent of each such reference. Where differences occur between the provisions of this code and the referenced standards, the provisions of this code shall apply. Whenever amendments have been adopted to the referenced codes and standards, each reference to said code and standard shall be considered to reference the amendments as well.

(b) Section 103 is hereby amended by deleting sections 103.1, 103.2 and 103.3 of said code and substituting therefore a new section 103.1 to provide as follows:

103.1 Department of Fire Prevention. The enforcement of this code shall be under the administrative and operational control of the fire marshal. The fire marshal shall be selected by the fire chief and serve in the position at the pleasure of the city council. The fire marshal may appoint deputies to assist him/her, subject to the approval of the fire chief.

(c) Section 109.3 of said code is hereby amended to provide as follows:

109.3 Violation penalties. Any person, firm, corporation, or other entity who violates a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the fire code official, or of a permit or certificate used under provisions of this code, shall be guilty of a misdemeanor punishable by a fine of not more than two thousand dollars ($2,000.00) or by imprisonment not exceeding twenty (20) days or both such fine and imprisonment. Each day that a violation continues shall constitute a separate offense.

(d) Section 111.4 of said code is hereby amended to provide as follows:

111.4 Failure to comply. Any person, firm, corporation, or other entity who shall continue any work after having been served with a stop work order, except such work as that person, firm, corporation, or other entity is directed to perform to remove a violation or unsafe condition, shall be liable for a fine not to exceed two thousand dollars ($2,000.00).

(e) Section 202 of the code is hereby amended by adding and/or changing the following definitions:

City. Shall mean the City of Tomball, Texas.

Fire Chief. Shall mean the City of Tomball chief of the fire department.

Fire Code Official. The fire marshal, or a duly authorized representative, is the designated authority charged by the fire chief with the duties of administration and enforcement of the code.

Fire Marshal. See fire code official.

High-Rise Building. A building having any floors used for human occupancy located more than 55 feet (16,764 mm) or three stories above the lowest level of fire department vehicle access.

Self-Service Storage Facility. Real property designated and used for the purpose of renting or leasing individual storage spaces to customers for the purpose of storing and removing personal property on a self-service basis.

Standby Personnel. Qualified fire service personnel, approved by the fire chief or fire marshal. When utilized, the number required shall be as directed by the fire chief or fire marshal. Charges for utilization shall be as normally calculated by the jurisdiction.

(f) Section 307.2 of said code is hereby amended to provide as follows:

307.2 Permit required. A permit shall be obtained from the fire code official in accordance with section 105.6 prior to kindling a fire for recognized silvicultural practices, prevention or control of disease or pests. Application for such approval shall only be presented by and permits issued to the owner of the land upon which the fire is to be kindled.

Examples of state or local law, or regulations referenced elsewhere in this section may include but not be limited to the following:

1. Texas Commission on Environmental Quality guidelines and/or restrictions.

2. State, county or local temporary or permanent bans on open burning.

3. Local written policies as established by the code official.

(g) Section 307.2.1 of said code is hereby added to provide as follows:

307.2.1. Open burning is prohibited within the city limits of Tomball unless a permit has been issued by the fire marshal for ceremonial fires, trench burning operations for major land clearing, and the prevention or disposal of diseased livestock. A permit is not required for barbeque pits and approved outdoor fireplaces, which are used for its actual design and intent and used in accordance with this code.

(h) Section 307.2.2 of said code is hereby amended to provide as follows:

307.2.2 Trench Burns. Trench burns shall be conducted in air curtain trenches and in accordance with section 307.2.

(i) Section 307.4 of said code is hereby amended to provide as follows:

307.4 Location. The location for open burning shall not be less than 300 feet (91,440 mm) from any structure, and provisions shall be made to prevent the fire from spreading to within 300 feet (91,440 mm) of any structure.

(j) Section 307.4.1 of said code is hereby deleted in its entirety.

(k) Section 307.4.2 of said code is hereby deleted in its entirety.

(l) Section 307.5 of said code is hereby amended to provide as follows:

307.5 Attendance. Trench burns or ceremonial fires shall be constantly attended until the fire is completely extinguished. A minimum of one portable fire extinguisher complying with section 906 with a minimum 4-A rating or other approved on site fire extinguishing equipment, such as dirt, sand, water, garden hose or water truck, shall be available for immediate utilization. A permit is required from the fire marshal's office, prior to the ignition of any said fire. The fire marshal may require a dedicated standby of qualified personnel to assist in the supervision.

(m) Section 308.1.2 of said code is hereby amended to provide as follows:

308.1.2 Throwing or placing sources of ignition. No person shall throw, sail, launch, or place, or cause to be thrown, sailed, launched, or placed, a lighted match, cigar, cigarette, matches, or other flaming or glowing substance or object on any surface or article where it can cause an unwanted fire.

(n) Section 308.1.4 of said code is hereby amended to provide as follows:

308.1.4 Open-flame cooking devices. Charcoal burners and other open-flame cooking devices used for cooking or recreational uses shall not be operated on combustible balconies or within 10 feet (3048 mm) of combustible construction.

No permit is required for this operation.

Exceptions:

1. One and two-family dwellings.

(o) Section 403.4 of said code is hereby amended to provide as follows:

403.4 Evacuation plan retention box. Where determined by the fire code official, certain occupancies shall install an approved repository of records containing the evacuation plans, floor plans, emergency cut-offs and other pertinent information to the building.

(p) Section 503.2.1 of said code is hereby amended to provide as follows:

503.2.1 Dimensions. Fire apparatus access roads shall have an unobstructed width of not less than 24 feet (7315 mm) and an unobstructed vertical clearance of not less than 14 feet (4267 mm).

(q) Section 503.3 of said code is hereby amended to provide as follows:

503.3 Marking. Approved striping or, when allowed by the code official, signs, or both, shall be provided for fire apparatus access roads to identify such roads or prohibit the obstruction thereof. Signs and striping shall be maintained in a clean and legible condition at all times and be replaced or repaired when necessary to provide adequate visibility.

1. Striping—Fire apparatus access roads shall be marked by painted lines of red traffic paint six inches (6") in width to show the boundaries of the lane. The words lettered "FIRE LANE—NO PARKING—TOW AWAY ZONE" shall appear in four inch (4") white letters on the red border markings along both sides of the fire lanes. Where a curb is available, the stripping shall be on the vertical face of the curb.

2. Signs—Signs shall read "NO PARKING FIRE LANE" or "FIRE LANE NO PARKING" and shall be 12" wide and 18" high. Signs shall be painted on a white background with letters and borders in red, using not less than 2" lettering. Signs shall be permanently affixed to a stationary post and the bottom of the sign shall be six feet, six inches (6'6") above finished grade. Signs shall be spaced not more than thirty feet (30') apart. Signs may be installed on permanent buildings or walls or as approved by the fire marshal.

(r) Section 503.4 of said code is hereby amended to provide as follows:

503.4 Obstruction of fire apparatus access roads. Fire apparatus access roads shall not be obstructed in any manner, including the parking of vehicles. The minimum widths and clearances established in section 503.2.1, and any area marked as a fire lane as described in section 503.3, shall be maintained at all times. This shall include painted fire lanes or tow away zones maintained and/or managed by a company or firm.

(s) Section 506 of said code is hereby deleted and a new section 506 is substituted therefore to provide as follows:

506.1 Key boxes required. The following structures and/or properties shall be equipped with an approved key lock security system box or electronic override key switch at or near the main entrance or such other location as required by the fire marshal:

1. Structures that are either equipped with, or required to be equipped with, fire sprinkler systems or fire detection alarm systems that report to an alarm monitoring center;

2. Multifamily residential structures that have restricted access through locked doors or gates and that have a common area or corridor for access to the living units;

3. Buildings, regardless of use or occupancy, that contains four (4) or more occupancies within the same structure that have separate entryways and exit ways that are separated by tenant space and/or have restricted common entryways and exit ways into the common area of the building;

4. Properties having mechanical gates that control vehicular and pedestrian access to commercial property or to private streets in subdivisions, apartment complexes, condominiums or other residential developments which contain more than two residential units; or

5. Commercial property with parking garages or secured parking and storage unit areas that will restrict access for emergency services.

6. In new and existing buildings where an elevator is provided, an approved box suitable for the storage of elevator keys and shall be located near the elevator car.

7. For any building above two stories or any Group E, H, I occupancy, including buildings used for higher education; a box shall be provided in an approved location for the storage of building specific data, not limited to floor plans, MSDS information and equipment disconnects to assist with emergency operations.

506.3 Type of key lock box required. The fire marshal shall designate the type of key lock box system to be implemented within the city and shall have the authority to require all structures and/or property to use the designated system.

506.4 Access to buildings. The owner or operator of a structure and/or property required to have a key lock box shall at all times keep the required keys in the lock box that will allow for access to the structure, required rooms and/or property. Required keys shall not include keys to individual living units.

(t) Section 509.2 of said code is hereby amended by adding a second paragraph as follows:

In new buildings equipped or required to be equipped with an automatic fire sprinkler system, access to the fire sprinkler control valves shall be provided directly through an exterior door.

(u) Section 807.4.4.2 of said code is hereby amended by adding an exception to provide as follows:

Exception: Corridors protected by an approved automatic sprinkler system installed in accordance with section 903.3.1.1 shall be limited to 50 percent of the wall area.

(v) Section 901.7 of said code is hereby amended to provide as follows:

901.7 Systems out of service. Where a required fire protection system is out of service or in the event of an excessive number of activations, the fire department and the code official shall be notified immediately and, where required by the code official, the building shall either be evacuated or an approved fire watch shall be provided for all occupants left unprotected by the shut down until the fire protection system has been returned to service. Where utilized, fire watches shall be provided with at least one approved means for notification of the fire department and their only duty shall be to perform constant patrols of the protected premises and keep watch for fires.

(w) Section 902.1 of said code is hereby amended by changing the following definition:

Fire Area. The aggregate floor area enclosed and bounded exterior walls of a building. Areas of the building not provided with surrounding walls shall be included in the fire area if such areas are included within the horizontal projection of the roof or floor next above.

(x) Section 903 Automatic Sprinkler System of said code is hereby amended by deleting the following exceptions.

Section 903.2.10

Section 903.2.11.3, exception #1 and #2 only

Section 903.4, exceptions #1 and #3 only

(y) Section 903.2 of said code is hereby amended by adding the following paragraphs:

Any building having a gross floor area of less than 12,000 square feet (1115 m^2) must be provided with an approved automatic sprinkler system throughout the building if, as a result of any addition, the total gross floor area of the building will exceed 12,000 square feet (1115 m^2) following the addition, regardless of existing firewall separation.

Exception:

Existing retail strip center buildings containing more than 5 spaces, regardless of occupancy use.

Any building or individual suite in a multitenant strip center, having a fire area and/or occupant load greater than that allowed by the code shall be provided with an automatic fire sprinkler system if it is determined that an amount greater or equal to fifty percent (50%) of the properties appraised value is effected by a manmade or natural disaster, including fire.

(z) Section 903.2.4 of said code is hereby amended to provide as follows:

Section 903.2.4 Group F-1 and F-2. An automatic sprinkler system shall be provided throughout all newly constructed buildings containing Group F-1 or Group F-2 occupancy where one of the following exists:

1: Where the Group F-1 or Group F-2 fire area exceeds 12,000 square feet;

2: Where the Group F-1 or Group F-2 fire area contains more than one story above grade; or

3: Where the combined area of all Group F-1 or Group F-2 fire areas on all floors, including any mezzanines, exceeds 12,000 square feet.

(aa) Section 903.2.7 of said code is hereby amended to provide as follows:

903.2.7 Group M and Group B. An automatic sprinkler system shall be provided throughout all newly constructed buildings containing Group M and Group B occupancy where one of the following conditions exists:

1: Where a Group M or Group B fire area exceeds 12,000 square feet;

2: Where a Group M or Group B fire area contains occupancy space that is located more than two stories above grade; or

3: Where the combined area of all Group M or Group B fire areas on all floors, including any mezzanines, exceeds 12,000 square feet.

(bb) Section 903.2.9.1 of said code is hereby amended to provide as follows:

903.2.9.1 Repair garages. An automatic sprinkler system shall be provided throughout all buildings used as repair garages in accordance with the International Building Code, as shown:

1. Buildings having two or more stories above grade plane, including basements, with a fire area containing a repair garage exceeding 5,000 square feet.

2. Buildings no more than one story above grade plane, with a fire area containing a repair garage exceeding 5,000 square feet (1115 m^2).

3. Buildings with repair garages servicing vehicles parked in basements.

4. A Group S-1 fire area used for the repair of commercial trucks or buses where the fire area exceeds 5,000 square feet

(cc) Section 903.2.9.3 of said code is hereby amended to provide as follows:

903.2.9.3 Self-service storage facility. An automatic sprinkler system shall be installed throughout all newly constructed self-service storage buildings exceeding 5000 square feet per fire area when access to each storage space is only available from an interior corridor.

(dd) Section 903.2.11 of said code is hereby amended by changing section 903.2.11.3, and adding sections 903.2.11.3.1, 903.2.11.6.1 and 903.2.11.6.2, to provide as follows:

903.2.11.3 Buildings more than thirty feet (30') or three (3) stories in height.

An automatic sprinkler system shall be installed throughout all newly constructed buildings with a floor level, other than penthouses in compliance with section 1509 of the International Building Code that is located thirty feet (30') or three (3) stories or more above the lowest level of fire department vehicle access.

Exceptions:

1. Airport control towers.

903.2.11.3.1 High-Piled Combustible Storage. For any building with a clear height exceeding twelve feet (12'), see chapter 23 to determine if those provisions apply.

903.2.11.6.1 Spray Booths and Rooms. New and existing spray booths and spraying rooms shall be protected by an approved automatic fire-extinguishing system.

903.2.11.6.2 Mixing Room. New and existing mixing booths shall be protected by an approved automatic fire-extinguishing system.

(ee) Section 903.3.1.2 of said code is hereby amended to provide as follows:

903.3.1.2 NFPA 13R sprinkler systems. Where allowed in buildings of Group R, up to and including four stories in height, automatic sprinkler systems shall be installed throughout in accordance with NFPA 13R. However, sprinkler protection is required in attic spaces, and elevator control rooms of such buildings three or more stories in height.

(ff) Section 903.3.5.1 of said code is hereby amended by adding a second paragraph to provide as follows:

Water supply as required for such systems shall be provided in conformance with the supply requirements of the respective standards; however, every fire protection system shall be designed with a 10-psi safety factor.

(gg) Section 906.2 of the said code is hereby amended as by deleting the exceptions.

(hh) Section 907.1.3 of said code is hereby amended by adding the following section:

907.1.3.1 Design Standards. All fire alarm systems new or replacement serving fifty (50) or more alarm actuating devices shall be intelligent addressable fire detection systems.

Exception: Existing systems need not comply unless a building remodel or expansion initiated after the effective date of this code, as adopted, causes the total fire area to exceed the square footage of the building in the applicable sections of this code.

(ii) Section 907.2 of said code is hereby amended to provide as follows:

907.2 Where required—New buildings and structures. A manual and automatic fire alarm system shall be provided in new buildings and structures other than in Group U occupancies that have a fire area exceeding 5000 square feet in accordance with sections 907.2.1 through 907.2.23. Systems shall be equipped with one means of automatic activation, and manual activation.

Approved automatic fire detection systems shall be installed in accordance with the provisions of this code and NFPA 72. Devices, combinations of devices, appliances and equipment shall comply with section 907.1.2. The automatic fire detectors shall be smoke detectors, except that an approved alternative type of detector shall be installed in spaces such as boiler rooms where, during normal operation, products of combustion are present in sufficient quantity to actuate a smoke detector.

(jj) Section 907.4 of said code is hereby amended by adding a second sentence to provide as follows:

Manual alarm actuating devices shall be an approved double action type.

(kk) Section 907.6.5 of said code is hereby amended to provide as follows:

Section 907.6.5 Monitoring. An approved supervising station in accordance with NFPA 72 fire alarm systems shall monitor all new and existing manual, automatic, or manual and automatic fire alarm system.

(ll) Section 912.1 of said code is hereby amended by adding criteria #1 and #2 to provide as follows:

1. Fire department connections to the fire sprinkler system shall consist of a five inch (5") "Storz" type adapter as approved by the code official.

a. Exception: NFPA 13D installed sprinkler systems.

2. The fire department connection shall be located remotely, at a distance no greater than 100 feet to the nearest fire hydrant.

(mm) Section 1011.1 of said code is hereby amended by adding criteria #1 to provide as follows:

Buildings two (2) or more stories in height shall provide secondary exits signs located near each exit access. These signs shall be mounted no higher than sixteen inches (16") from the finished floor surface to the bottom of the sign. Approved signs may be self-luminescent for means of illumination.

(nn) Section 1015.1 of said code is hereby amended by adding #4 to the list of requirements.

4. Each individual tenant space in a retail strip center shall be provided with a secondary exit door in an approved location, regardless of travel distance or occupant load.

(oo) Section 2404.4 of said code is hereby amended to provide as follows:

2404.4 Fire Protection. New and existing spray booths and spray rooms shall be protected by an approved automatic fire-extinguishing system complying with chapter 9 which shall also protect exhaust plenums, exhaust ducts and both sides of dry filters when such filters are used.

(pp) Section 3202 of said code is hereby amended by adding a second paragraph to the definition of "High-Piled Combustible Storage" to provide as follows:

Any building exceeding 3,000 square feet that has a clear height in excess of 12 feet, making it possible to be used for storage in excess of 12 feet, shall be considered to be high-piled storage and shall comply with the provisions of this section. When a specific product cannot be identified, a fire protection system shall be installed as for Class IV commodities, to the maximum pile height.

(qq) Section 5601.1 of said code is hereby amended by deleting the "exceptions" contained in paragraphs numbered 1 through 4 and adding the following sections:

5601.1.3 Fireworks. The possession, manufacture, storage, sale, handling and use of fireworks are prohibited within the corporate limits of the city.

The possession, manufacture, storage, sale, handling and use of fireworks are declared to be a nuisance and are prohibited within the area immediately adjacent and contiguous to the city limits and extending outside the city limits for a distance of five thousand (5,000) feet unless such area is within the corporate limits of another municipality.

Exceptions:

Only when approved for fireworks displays, storage and handling of fireworks as provided in section 5601.2.4.2 and 5601.4.

The use of fireworks for approved displays as permitted in section 5608.

(rr) Section 5605.1 of said code is hereby deleted.

(ss) Appendix table D103.4 of said code is hereby amended to provide as follows:

Table D103.4. Width should be a minimum of 24 feet for lengths up to 500 feet.

(tt) Appendix D103.5 of said code is hereby amended to provide as follows:

Appendix D103.5. Fire apparatus access road gates. Gates securing the fire apparatus access roads shall comply with all of the following criteria:

1. The minimum gate width shall be 24 feet.

(Code 1993, § 34-74; Ord. No. 2006-01, § 3, 3-6-2006; Ord. No. 2008-03, § 1(34-74), 3-3-2008; Ord. No. 2014-11, § 1(34-71), 5-5-2014)

Secs. 20-29—20-46. Reserved.

ARTICLE III. STANDARDS FOR INSTALLATION OF FIRE SPRINKLER SYSTEMS

Sec. 20-47. NFPA 13, NFPA 13D, and NFPA 13R standards for the installation of sprinkler systems.

Sec. 20-48. Amendments to NFPA 13D.

Secs. 20-49—20-69. Reserved.

Sec. 20-47. NFPA 13, NFPA 13D, and NFPA 13R standards for the installation of sprinkler systems.

(a) The NFPA 13, NFPA 13D, and NFPA 13R Standards, hereinafter sometimes referred to as the "standards", as published by the National Fire Protection Association, Inc., and as amended herein, are hereby adopted.

(b) Sprinkler systems shall comply with the most recent edition of applicable standards at the time of installation. A copy of said standards is attached to the ordinance from which this section is derived and made a part hereof for all purposes, an authentic copy of which has been filed with the city secretary.

(Code 1993, § 34-91; Ord. No. 2006-01, § 4, 3-6-2006; Ord. No. 2008-03, § 1(34-91), 3-3-2008; Ord. No. 2014-11, § 1(34-91), 5-5-2014)

Sec. 20-48. Amendments to NFPA 13D.

(a) Section 3.3.13.1 of NFPA 13 D is hereby amended by deleting the definition of "Check Valve" and substituting therefor a new definition to provide as follows:

Double Check Valve. A valve that allows flow in one direction only, on the system side.

(b) Section 3.3.13.2 of NFPA 13 D Is hereby amended by deleting the definition of "Control Valve" and substituting therefore a new definition to provide as follows:

Each system shall have a single control valve arranged to shut off both the domestic system and the sprinkler system, and there shall be a separate shutoff valve for the domestic system only. However, the sprinkler system shall be permitted to have a separate control valve where supervised by a central station or remote station alarm service.

(c) Section 8.3.1 of NFPA 13D is here by amended to provide as follows:

8.3.1 Sprinklers shall be installed in all areas.

(Code 1993, § 34-92; Ord. No. 2006-01, § 4, 3-6-2006; Ord. No. 2008-03, § 1(34-92), 3-3-2008; Ord. No. 2014-11, § 1(34-92), 5-5-2014)

Secs. 20-49—20-69. Reserved.

ARTICLE IV. FIRE LANES

Sec. 20-70. Definitions.

Sec. 20-71. Designation and location.

Sec. 20-72. Fire lane marking.

Sec. 20-73. Proposed construction; submittal of plot plans.

Sec. 20-74. Parking prohibited within fire lane.

Sec. 20-75. Summons.

Secs. 20-76—20-93. Reserved.

Sec. 20-70. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Fire lane means any area appurtenant to entrances or exits of a building deemed necessary by the fire marshal to remain free and clear of parked vehicles for access to such building in case of fire or other emergency and designated by him as such, and may, in the discretion of the fire marshal include sidewalks, driveways, portions of parking lots, or any other area adjacent to or near the entrances or exits to any building.

Hospital means any public or private hospital, convalescent home or nursing home.

Shopping center means a group of commercial business establishments, planned, developed, owned and managed as a unit, with off-street parking provided on the property, and related in location, size, and types of shops to the trade area that the unit serves.

(Code 1993, § 34-93; Ord. No. 2006-01, § 5, 3-6-2006)

Sec. 20-71. Designation and location.

The fire marshal is hereby authorized to designate fire lanes on the property of shopping centers and hospitals, appurtenant to buildings or the entrances or exits to stores, groups of stores or buildings, where in his opinion, such areas must be kept free of parked vehicles and other obstructions to provide ready access to such stores, groups of stores, or buildings, in case of fire or other emergencies. The designation by the fire marshal of such fire lanes shall never be held to make the city responsible for the maintenance of such fire lanes on private property, but the owner of such property shall continue to be responsible for the maintenance of such area. The official record of the designation and location of any such fire lanes shall be kept in the office of the fire marshal of the city and under the custody and control of the fire marshal.

(Code 1993, § 34-94; Ord. No. 2006-01, § 5, 3-6-2006)

Sec. 20-72. Fire lane marking.

Upon the designation of a fire lane pursuant to section 20-71, the fire marshal shall give notice of such designation to the owner of such shopping center or hospital, directing the owner to cause signs to be posted at the expense of the owner, at either extremity of such fire lanes, lettered "Fire Lane—No Parking—Tow Away Zone." Such signs shall be of a standard size and color, of standard lettering and mounting, such standards of size, coloring and lettering to conform to patterns, drawings or samples of same to be obtained from the city department of traffic and transportation of the city and such standards of mounting, including, but not limited to, the height above the grade at which such sign is to be mounted, to be adopted by the fire marshal.

(Code 1993, § 34-95; Ord. No. 2006-01, § 5, 3-6-2006)

Sec. 20-73. Proposed construction; submittal of plot plans.

The building inspector of the city shall hereafter submit plot plans of proposed shopping center or hospital construction, prior to the issuance of a building permit thereon, to the fire marshal for his review and approval of the adequacy of fire lanes provided therefor.

(Code 1993, § 34-96; Ord. No. 2006-01, § 5, 3-6-2006)

Sec. 20-74. Parking prohibited within fire lane.

When signs are erected giving notice thereof, it shall be unlawful for the owner or operator of any motor vehicle to allow, cause or permit such vehicle to remain standing or parked within any fire lane hereafter designated by the fire marshal.

(Code 1993, § 34-97; Ord. No. 2006-01, § 5, 3-6-2006)

Sec. 20-75. Summons.

Any summons or notice to appear in answer to a charge of parking in violation of section 20-74 shall be issued on official forms therefor prescribed by the city. Such summons or notice shall require the appearance of the violator before the city court and all fines paid by the violator shall be paid to the municipal court clerk's department. The summons or notice to appear in answer to a charge of parking in violation of section 20-74, specifying the location of the fire lane in which such violation occurred and the date and time of such violation, may be issued by the fire marshal's office or any member of the city police department otherwise empowered to issue tickets for parking violations.

(Code 1993, § 34-98; Ord. No. 2006-01, § 5, 3-6-2006)

Secs. 20-76—20-93. Reserved.

ARTICLE V. ARSON REWARDS

Sec. 20-94. Established.

Sec. 20-95. How offered.

Sec. 20-96. Notice.

Sec. 20-97. Payment.

Sec. 20-98. City officers.

Sec. 20-94. Established.

The mayor is hereby empowered to offer a reward of $250.00, payable to the person who shall be responsible for the arrest and conviction of any person committing in the city the crime of arson as the same is now defined by the state Penal Code.

(Code 1978, § 8-1; Code 1993, § 34-1)

State law reference— Arson generally, V.T.C.A., Penal Code § 28.02; crime stoppers, V.T.C.A., Government Code ch. 414.

Sec. 20-95. How offered.

Whenever the mayor shall be informed that any fire occurring in the city was of an incendiary origin, he shall call for a report on the same by the city fire marshal, and if the marshal shall report that such fire was caused by the commission of the crime of arson, it shall become the duty of the mayor to offer the reward provided by section 20-94, which reward shall be in the form of a proclamation duly issued by the mayor under his official signature and attested by the seal of the city.

(Code 1978, § 8-2; Code 1993, § 34-2)

Sec. 20-96. Notice.

(a) The city secretary is hereby directed to have prepared and posted an arson reward notice on placards eight inches by 12 inches in size showing the following reward notice:

"Arson Reward. The City of Tomball, Texas, hereby offers the reward of $250.00 for the arrest and conviction of any person or persons found guilty of committing the crime of arson within the corporate limits of the City of Tomball, Texas. This reward is a standing offer and shall be paid out of the general fund of the City of Tomball, Texas."

(b) Such placards shall be placed in wooden frames under glass and shall be posted inside at least six different public buildings within the city, one of which shall be the city hall, in accordance with the regulations of the state fire insurance department.

(Code 1978, § 8-3; Code 1993, § 34-3)

Sec. 20-97. Payment.

Upon information being given by any person causing the arrest and conviction of any person guilty of the specific crime of arson, and upon the final conviction of such person, the person giving such information shall be entitled to receive the reward offered in section 20-94 from the city.

(Code 1978, § 8-4; Code 1993, § 34-4)

Sec. 20-98. City officers.

No officer in the employ of the city, county or state, whose duty it is to detect violations of the law or make arrests in connection therewith, shall be entitled to any reward for information leading to the arrest or conviction of any person guilty of arson.

(Code 1978, § 8-5; Code 1993, § 34-5)

Chapter 21 RESERVED

Chapter 22 HEALTH AND SANITATION [1]

ARTICLE I. - IN GENERAL

ARTICLE II. - HOSPITAL AUTHORITY

ARTICLE III. - FOOD AND FOOD ESTABLISHMENTS

ARTICLE IV. - SMOKING AND TOBACCO

ARTICLE V. - TOBACCO-FREE WORKPLACE

ARTICLE VI. - PROHIBITED SMOKING PARAPHERNALIA AND SMOKING PRODUCTS

ARTICLE VII. - DONATION CONTAINERS

FOOTNOTE(S):

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Charter reference— Health department, § 7.09. (Back)

State Law reference— Health and safety generally, V.T.C.A., Health and Safety Code ch. 1 et seq. (Back)

ARTICLE I. IN GENERAL

Secs. 22-1—22-18. Reserved.

Secs. 22-1—22-18. Reserved.

ARTICLE II. HOSPITAL AUTHORITY [2]

Sec. 22-19. Created.

Sec. 22-20. Territory.

Sec. 22-21. Composition.

Sec. 22-22. Appointment of board members.

Sec. 22-23. Exercise of powers.

Sec. 22-24. Powers and duties.

Secs. 22-25—22-51. Reserved.

Sec. 22-19. Created.

A hospital authority is hereby created under and pursuant to the Hospital Authority Act, V.T.C.A., Health and Safety Code ch. 262, and the name by which such hospital authority shall be known is hereby designated to be the city hospital authority, hereinafter called the "hospital authority."

(Code 1978, § 10-16; Code 1993, § 42-61)

Sec. 22-20. Territory.

The hospital authority shall comprise only the territory included within the boundaries of the city, as such boundaries lawfully existed on July 30, 1973; provided, however, that no defect in the definition of the boundaries of the city or in any proceedings for annexation or disannexation of territory shall affect the validity of the creation and existence of the hospital authority or any of its powers, duties and functions.

(Code 1978, § 10-17; Code 1993, § 42-62)

Sec. 22-21. Composition.

The hospital authority shall be governed by a board of directors consisting of 11 members.

(Code 1978, § 10-18; Code 1993, § 42-63)

Sec. 22-22. Appointment of board members.

The city council shall appoint five board members to serve on the board of directors of the city hospital authority, as follows:

(1) Upon the passage of the ordinance from which this article is derived, each of the directors shall thereafter hold a specific position to be known as position one, position two, position three, position four and position five.

(2) The board members who are appointed by the city council to begin their terms on September 1, 1993, shall serve as follows:

a. Position one, a term of one year, beginning September 1, 1993, and expiring on August 31, 1994.

b. Position two, a term of two years, beginning September 1, 1993, and expiring on August 31, 1995.

c. Position three, a term of one year, beginning September 1, 1993, and expiring on August 31, 1994.

d. Position four, a term of two years, beginning September 1, 1993, and expiring on August 31, 1995.

e. Position five, a term of one year, beginning September 1, 1993, and expiring on August 31, 1994.

(3) All future appointments of directors shall be for a term of two years, so that the odd-numbered positions, one, three and five, shall be appointed in even-numbered years and the even-positions, two and four, shall be appointed in odd-numbered years.

(Code 1993, § 42-64; Ord. No. 2000-03, § 1, 2-21-2000)

State law reference— Appointment, V.T.C.A., Health and Safety Code § 262.012.

Sec. 22-23. Exercise of powers.

After the appointment, qualification and organization of the board of directors, the hospital authority shall be authorized to transact business and to exercise its powers, duties and functions pursuant to the Hospital Authority Act and other applicable laws.

(Code 1978, § 10-20; Code 1993, § 42-65)

Sec. 22-24. Powers and duties.

The hospital authority shall be without taxing power, shall be a body politic and corporate, shall have the power of perpetual succession, have a seal, have the power to sue and be sued and have the power to make, amend and repeal its bylaws, all as authorized by the Hospital Authority Act, and shall have all other powers, duties and functions conferred upon a hospital authority by the Hospital Authority Act, V.T.C.A., Health and Safety Code ch. 262, and by law.

(Code 1978, § 10-21; Code 1993, § 42-66)

Secs. 22-25—22-51. Reserved.

FOOTNOTE(S):

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State Law reference— Hospital Authority Act, V.T.C.A., Health and Safety Code ch. 262. (Back)

ARTICLE III. FOOD AND FOOD ESTABLISHMENTS [3]

DIVISION 1. - GENERALLY

DIVISION 2. - FOOD ESTABLISHMENT PERMITS

FOOTNOTE(S):

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State Law reference— Minimum standards of sanitation and health protection measures, V.T.C.A., Health and Safety Code ch. 341; Texas Food, Drug, and Cosmetic Act, V.T.C.A., Health and Safety Code ch. 431; food service establishments, retail food stores, mobile food units and roadside food vendors, V.T.C.A., Health and Safety Code ch. 437; public health measures relating to food, V.T.C.A., Health and Safety Code ch. 438. (Back)

DIVISION 1. GENERALLY

Sec. 22-52. Definitions.

Sec. 22-53. State regulations adopted.

Sec. 22-54. Health authority designated.

Sec. 22-55. Review of food establishments' plans.

Sec. 22-56. Food manager certification.

Secs. 22-57—22-85. Reserved.

Sec. 22-52. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. All definitions contained in the Texas Department of Health Texas Food Establishment Rules; the Harris County Rules Regulating Food Establishments in Harris County, Texas; the Regulation of Food Service Establishments, Retail Food Stores, Mobile Food Units, and Roadside Food Vendors (V.T.C.A., Health and Safety Code ch. 437); the Texas Food, Drug, and Cosmetic Act (V.T.C.A., Health and Safety Code ch. 431); and the Minimum Standards of Sanitation and Health Protection Measures (V.T.C.A., Health and Safety Code ch. 341), are hereby adopted.

Childcare facility means a facility keeping more than 12 unrelated children that provides care, training, education, custody or supervision for children under 15 years of age, who are not related by blood, marriage or adoption to the owner or operator of the facility, for all or part of the day, whether or not the facility is operated for profit or charges for the services it offers.

City health department. The city does not operate a city health department; however, to assure a high quality of health and sanitation standards for the city, the city shall utilize and adhere to all rules and regulations regarding health and sanitation standards outlined, required, and governed by the Harris County department of health and the state health department.

Food establishment means all places where food or drink are manufactured, packaged, produced, processed, transported, stored, sold, commercially prepared, or otherwise handled, whether offered for sale, given in exchange or given away for use as food or furnished for human consumption. The term "food establishment" does not apply to private homes where food is prepared or served for guest and individual family consumption. The term "food establishment" does not apply to a place where commercially packaged single portion nonpotentially hazardous snack items and wrapped candy are sold over the counter.

Health department means the county public health and environmental services.

Nonprofit facilities includes food service enterprises which are tax exempt which shall include, but not be limited to, the concession stands at the city high school football stadium, the concession stands at the little league and Redcat football games, and food service activities by service clubs in the city. All of these nonprofit facilities will be required to make application for a permit and meet current requirements, but are exempt from the payment of the permit fee. Proof of IRS tax exemption may be required by the health officer to determine whether or not a particular activity falls under the exemption for nonprofit facilities.

Ownership of business means the owner or operator of the business. Each new business owner or operator shall comply with this article.

Regulatory authority means representatives of the county health department.

Service of notice. Notice provided for in these rules is properly served when it is delivered to the holder of the permit or the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the permit.

(Code 1993, § 42-86; Ord. No. 89-10, § 25-5, 8-21-1989; Ord. No. 2003-17, § 1, 11-3-2003)

Sec. 22-53. State regulations adopted.

(a) There is hereby adopted by reference the state Department of Health Texas Food Establishment Rules (25 Texas Admin. Code §§ 229.161—229.171 and 229.173—229.175); the Harris County Rules Regulating Food Establishments in Harris County, Texas; the Regulation of Food Service

Establishments, Retail Food Stores, Mobile Food Units, and Roadside Food Vendors (V.T.C.A., Health and Safety Code ch. 437); the Texas Food, Drug, and Cosmetic Act (V.T.C.A., Health and Safety Code ch. 431); and the Minimum Standards of Sanitation and Health Protection Measures (V.T.C.A., Health and Safety Code ch. 341).

(b) A certified copy of each rule manual, as set forth in subsection (a) of this section, shall be kept on file in the office of the city secretary.

(Code 1993, § 42-88; Ord. No. 89-10, § 25-4, 8-21-1989; Ord. No. 2003-17, § 2, 11-3-2003)

Sec. 22-54. Health authority designated.

The city designates the county health department director as its health authority for the purpose of food establishment surveillance for the public health protection of its residents. The county health department director shall cooperate with the city in providing the food establishment surveillance for the city.

(Code 1993, § 42-89; Ord. No. 89-10, § 25-3, 8-21-1989)

Sec. 22-55. Review of food establishments' plans.

(a) *Submission of plans.* Whenever a food establishment is constructed or extensively remodeled and whenever an existing structure is converted to use as a food establishment, properly prepared plans and specifications for such construction, remodeling, or conversion shall be submitted to the city and the county health department for review and approval before construction, remodeling or conversion is begun. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans, and construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The city and the county health department shall approve the plans and specifications if they meet the requirements of these rules and the requirements for the issuance of a building permit from the city. Nothing in this section shall exempt anyone from the normal procedures for obtaining building permits from the city. No food establishment shall be constructed, extensively remodeled, or converted except in accordance with plans and specifications approved by the county health department and in accordance with this article and city ordinances.

(b) *Preoperational inspection.* The county health department shall inspect any food establishment prior to its beginning operation to determine compliance with approved plans and specifications and with the requirements of these rules.

(Code 1993, § 42-90; Ord. No. 89-10, § 25-7, 8-21-1989)

Sec. 22-56. Food manager certification.

(a) *Requirement.* Every permitted food establishment, except establishments dealing only in fresh produce, nonpotentially hazardous food, and/or prepackaged potentially hazardous food, shall have a person employed in a managerial capacity possessing a current food manager's certificate issued by the health department. A certified manager or person in charge must be on duty during all hours of operation of any nonexempt food service establishment employing six or more employees per eight-hour shift.

(1) Upon written application and presentation of evidence of satisfactory completion of a food manager's course, equivalent training, or examination as approved by the director of public health, the health department shall issue a food manager's certificate valid for three years from the date of training or evaluation unless sooner revoked. Suspension or revocation of an establishment's health permit by the health department shall constitute cause for revocation of that manager's certification.

(2) Whenever the food service operator holding the certificate terminates employment, is terminated, or is transferred to another food establishment, the person owning, operating, or managing the food establishment shall be allowed 60 days from the date of termination or transfer of the certificate holder to comply with this section.

(b) *Exemptions from certificate requirement.* Temporary food establishments and persons participating as volunteer food handlers performing charitable activities for periods of 14 days or less may be exempted from the requirement for a manager's certificate.

(Code 1993, § 42-91; Ord. No. 89-10, § 25-8, 8-21-1989)

Secs. 22-57—22-85. Reserved.

DIVISION 2. FOOD ESTABLISHMENT PERMITS

Sec. 22-86. Required.

Sec. 22-87. Posting.

Sec. 22-88. Transfer.

Sec. 22-89. Denial; suspension; revocation.

Sec. 22-90. Hearings.

Sec. 22-91. Application after revocation.

Sec. 22-92. Permit fees.

Secs. 22-93—22-112. Reserved.

Sec. 22-86. Required.

It shall be unlawful for any person to operate a food establishment in the city, unless he possesses a current and valid health permit issued by the county health department.

(Code 1993, § 42-101; Ord. No. 89-10, § 25-6(a), 8-21-1989)

Sec. 22-87. Posting.

A valid permit issued under this division shall be posted in public view in a conspicuous place at the food establishment for which it is issued.

(Code 1993, § 42-102; Ord. No. 89-10, § 25-6(b), 8-21-1989)

Sec. 22-88. Transfer.

Permits issued under the provisions of this division are not transferable. Upon change of ownership of a business, the new business owner will be required to meet current standards as defined in city ordinances and state law before a permit will be issued.

(Code 1993, § 42-103; Ord. No. 89-10, § 25-6(c), 8-21-1989)

Sec. 22-89. Denial; suspension; revocation.

The county health department may deny, suspend or revoke any permit to operate a food service establishment, retail food store, temporary food establishment, mobile food unit or roadside food vendor if the holder of the permit does not comply with these rules and regulations or if the operation of the establishment otherwise constitutes a substantial hazard to public health. A permit can be suspended only after notice and an opportunity for a hearing as described in section 22-90 have been given. This notice must list specific violations of rules and regulations and a period of time in which violations are to be corrected. Failure to correct violations as listed on the notice will be grounds for denial, suspension, or revocation of a permit. If a permit is then denied, suspended, or revoked, the holder of the permit has three working days to request a hearing. This request must be in writing and delivered to the county health department. A hearing must be held within seven working days of the request. If no request for hearing is made within the time limits, the denial, suspension or revocation is sustained.

(Code 1993, § 42-104; Ord. No. 89-10, § 25-6(d), 8-21-1989)

Sec. 22-90. Hearings.

The hearings provided for in this division shall be conducted by the county health department at a time and place designated by it. Based upon the recorded evidence of such hearings, the county health department shall make a final finding, and shall sustain, modify or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the holder of the permit, license, or certificate by the county health department and kept on file at the city.

(Code 1993, § 42-105; Ord. No. 89-10, § 25-6(e), 8-21-1989)

Sec. 22-91. Application after revocation.

Whenever a revocation of a permit issued under this division has become final pursuant to the determination of the director of the county health department, the holder of the revoked permit may make written application for a new permit to the health department.

(Code 1993, § 42-106; Ord. No. 89-10, § 25-6(f), 8-21-1989)

Sec. 22-92. Permit fees.

A health permit fee, as established by the commissioners' court in unincorporated areas of the county, is required annually for each food establishment. Fees are due and payable on or before one year from date of issuance and are to be paid to the county health department.

(Code 1993, § 42-107; Ord. No. 89-10, § 25-6(g), 8-21-1989)

Secs. 22-93—22-112. Reserved.

ARTICLE IV. SMOKING AND TOBACCO [4]

Sec. 22-113. Definitions.

Sec. 22-114. Penalties.

Sec. 22-115. Prohibited in certain public areas.

Sec. 22-116. Regulation of smoking in food establishments.

Sec. 22-117. Regulation in the workplace.

Sec. 22-118. Owner reporting requirements.

Sec. 22-119. Structural modifications.

Sec. 22-120. Article cumulative.

Secs. 22-121—22-138. Reserved.

Sec. 22-113. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Administrative area means the area of an establishment not generally accessible to the public, including, but not limited to, individual offices, stockrooms, employee lounges or meeting rooms.

Dining area means any area containing a counter, booths or tables upon which meals are served.

Director means the director of the department designated by the city manager to enforce and administer this article or the director's designated representative.

Employee means any person who is employed for direct or indirect monetary wages or profit.

Employer means any person who employs one or more persons.

Enclosed means closed in by a roof and walls with appropriate openings for ingress and egress, but does not include areas commonly described as public lobbies.

Food processing establishment means a commercial establishment in which food is manufactured or packaged for human consumption. The term "food processing establishment" does not include a food service establishment, retail food store, or commissary operation.

Food service establishment means any place where food is prepared and intended for individual portion service and includes the site at which individual portions are provided. The term "food service establishment" includes any such place regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. The term "food service establishment" also includes delicatessen-type operations that prepare sandwiches intended for individual portion service. The term "food service establishment" does not include private homes where food is prepared or served for individual family consumption, retail food stores, the location of food vending machines and supply vehicles.

Hospital means any institution that provides medical, surgical, and overnight facilities for patients.

Lounge bar means all areas of any establishment having 70 percent of its gross sales from the sale of alcoholic beverages for on-premises consumption.

Movie theater means any theater engaged in the business of exhibiting motion pictures to the public.

Public place means any enclosed indoor area that is used by the general public, or that is a place of employment, and includes, but is not limited to, stores, offices, and other commercial establishments; restaurants, public and private institutions of higher education; and health care facilities.

Public service area means any area to which the general public routinely has access for municipal services or which is designated a public service area in written policy.

Reasonably sized signs at entrances means signs with lettering that are a minimum of three-fourths inch in size stating "No Smoking Except In Designated Areas" and in letters which are a minimum of three-eighths inch in size stating "City of Tomball Ordinance." The universal emblem for "no smoking" will be used in addition to the wording.

Restaurant bar means any area of a restaurant, excluding the dining area that is primarily devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which food service, if any, is only incidental to the consumption of such beverages.

Retail and service establishments means any establishment which sells goods or services to the public.

Service line means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

Smoke or *smoking* means the carrying or holding of a lighted pipe, cigar or cigarette of any kind, or any other lighted smoking equipment or device, and the lighting of, emitting, or exhaling the smoke of a pipe, cigar or cigarette of any kind.

Workplace means any enclosed area of a structure, or portion thereof, intended for occupancy by employees, who provide primarily clerical, professional, or business services of a business entity, or which provide primarily clerical, professional, or business services to other business entities, or to the public, at that location. The enclosed indoor area under the control of the employer shall include those areas to which employees have access to during the course of employment, including, but not limited to, work areas, employee lounges, employee restrooms, employee conference rooms, and employee cafeterias. A private residence is not a place of employment.

(Code 1978, § 21.5-1; Code 1993, § 42-131)

Sec. 22-114. Penalties.

Notwithstanding anything in this article to the contrary, it is hereby provided that any owner of a food establishment found in violation of this article shall, in the first instance, receive a written warning in a form prescribed by the city along with a copy of this article. Thereafter, penalties shall be assessed.

(Code 1978, § 21.5-8; Code 1993, § 42-132)

Sec. 22-115. Prohibited in certain public areas.

(a) *Offense.* A person commits an offense if he smokes or possesses burning tobacco, weed or other plant product in any of the following indoor or enclosed areas:

(1) An elevator used by the public;

(2) A hospital or nursing home corridor providing direct access to patients' rooms and patient treatment areas of all medical facilities;

(3) Any conference room, meeting room, or public service area of any facility owned, operated or managed by the city;

(4) All retail or service establishments and financial institutions serving the general public, including, but not limited to, any department store, grocery store, drug store, clothing store, shoe store, hardware store, banks, savings and loan, laundromats, hair salons or barbershops, and shall include all public areas and waiting rooms of public transportation facilities, including, but not limited to, bus facilities, common areas of theaters, and cultural facilities; provided that smoking may be allowed in the common areas of shopping malls;

(5) An area marked by a no smoking sign in accordance with subsection (b) of this section by the owner or person in control of a hospital, nursing home or retail or service establishment serving the general public;

(6) Any facility of a public primary or secondary school; or an enclosed theater, movie theater, library, museum, transportation vehicles, such as buses; except on chartered buses for private hire or in taxicabs clearly designated by the operation to permit smoking; and

(7) All rooms in which meetings and/or hearings are open to the public.

(b) *Signs to be posted.* The owner or person in control of an establishment or area designated in subsection (a) of this section shall post a conspicuous reasonably sized sign at the main entrance to the establishment.

(c) *Hospitals.* Every hospital shall:

(1) Allow all patients, prior to elective admission, to choose to be in a no smoking patient room;

(2) Require that employees or visitors obtain express approval from all patients in a patient room prior to smoking; and

(3) Comply with all other provisions of this article relative to public areas, food establishments or work areas.

(d) *Smoking areas designated.* The owner or person in control of an establishment or area described in subsection (a)(4) or (6) of this section may designate an area, including, but not limited to, lobbies, meeting rooms, waiting rooms, or lounges, as a smoking area; provided that the designated smoking area may not:

(1) Include the entire establishment;

(2) Include immediate cashier areas, over the counter sales, or service lines;

(3) Include the viewing area of any theater or movie theater; or

(4) Be larger in size than 50 percent of the common area of the establishment.

(e) *Defense to prosecution.* It is further a defense to prosecution under this section if the person was smoking:

(1) In a location that was a designated smoking area of a facility of establishment described in subsection (a)(2), (4), or (6) of this section, which is posted as a smoking area with appropriate signs;

(2) In a location that was an administrative area or office of an establishment described in subsection (a)(4) or (6) of this section;

(3) In a location that was a retail or service establishment serving the general public with less than 500 square feet of public showroom or service space or having only one employee on duty, unless posted as designated in subsection (a)(5) of this section;

(4) In a location that was a retail or service establishment which is primarily engaged in the sale of tobacco, tobacco products, or smoking implements;

(5) As a participant in an authorized theatrical performance; or

(6) In a situation in which the person is present at an event in which an entire room or a hall is used for private social function and seating arrangements are under the control of the sponsor of the function and not of the proprietor or person in charge of the place.

(f) *Written policy required.* The owner or person in control of any facility or area designated as a no smoking area in subsections (a)(3) or (4) of this section shall:

(1) Have and implement a written policy on smoking which conforms to this article; and

(2) Make the policy available for inspection by employees and the director.

(Code 1978, § 21.5-2; Code 1993, § 42-133)

Sec. 22-116. Regulation of smoking in food establishments.

(a) A food establishment which has indoor or enclosed dining shall provide separate dining areas for smoking and nonsmoking patrons.

(b) A nonsmoking area must:

(1) Be separated, where feasible, from smoking areas by a minimum of four feet of contiguous floor space;

(2) Be ventilated, where feasible, and situated so that air from the smoking area is not drawn into or across the nonsmoking area;

(3) Be clearly designated by appropriate signs visible to patrons within the dining area indicating that the area is designated nonsmoking;

(4) Have ashtrays or other suitable containers for extinguishing smoking materials at the perimeter of the nonsmoking area; and

(5) Be adequate in size to provide for the seating of all patrons who desire to be seated within a nonsmoking section.

(c) Each food establishment which has a dining area shall:

(1) Have and implement a written policy on smoking which conforms to this article;

(2) Make the policy available for inspection by employees and the director or his authorized representatives; and

(3) Have reasonably sized signs at the establishment's entrance indicating that nonsmoking seating is available.

(d) Nondining areas of any food establishment affected by this section to which patrons have general access, including, but not limited to, food order areas, food service areas, restrooms, and cashier areas, shall be designated as nonsmoking areas.

(e) It is a defense to prosecution under this section that the food establishment is:

(1) An establishment which has indoor seating arrangements for less than 20 patrons;

(2) An establishment which has more than 80 percent of its annual gross sales in alcoholic beverages;

(3) A physically separated bar area of a food products establishment otherwise regulated; or

(4) Providing a designated nonsmoking section for its patrons which are a minimum of 50 percent of the total seating capacity of the establishment.

(f) A person commits an offense if he smokes or possesses a burning tobacco, weed or other plant product in an area of a food products establishment designated as nonsmoking.

(Code 1978, § 21.5-3; Code 1993, § 42-134)

Sec. 22-117. Regulation in the workplace.

(a) Notwithstanding the provisions of sections 22-115 and 22-116, any employer may designate any workplace, or portion thereof, as a smoking area. Any employer who chooses to designate any workplace, or portion thereof, as a smoking area shall:

(1) Have and implement a written policy on smoking which conforms to this article;

(2) Make the policy available for inspection by employees and the director or his authorized representatives;

(3) Prominently display appropriate signs indicating that smoking is allowed or prohibited; and

(4) Provide facilities in sufficient numbers and at such locations to be readily accessible for the extinguishment of smoking materials.

(b) It shall be unlawful for any person to violate any of the provisions of an employer's written smoking policy, adopted, implemented, and maintained in accordance with subsection (a) of this section,

provided that it shall be a defense to prosecution under this section that the workplace does not have prominently displayed, reasonably sized signs indicating that smoking is prohibited.

(Code 1978, § 21.5-4; Code 1993, § 42-135)

Sec. 22-118. Owner reporting requirements.

This article does not require the affirmative action of an owner, operator, manager, or any employee of an establishment to report a violation or to take any action against any individual violating this article.

(Code 1978, § 21.5-5; Code 1993, § 42-136)

Sec. 22-119. Structural modifications.

Nothing in this article shall require the owner, operator, manager, or other person in control of any building, facility, room, establishment, or structure to incur any expense to make structural or other physical modifications in order to comply with the terms and conditions of this article. The posting of signs or the equipping of any area for the extinguishment of smoking materials shall not be construed to be structural or other physical modifications.

(Code 1978, § 21.5-6; Code 1993, § 42-137)

Sec. 22-120. Article cumulative.

This article shall be cumulative of federal and state ordinances regulating smoking.

(Code 1978, § 21.5-7; Code 1993, § 42-138)

Secs. 22-121—22-138. Reserved.

FOOTNOTE(S):

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State Law reference— Texas Clean Air Act, V.T.C.A., Health and Safety Code ch. 382; smoking tobacco prohibited in certain public places, V.T.C.A., Penal Code § 48.01. (Back)

ARTICLE V. TOBACCO-FREE WORKPLACE [5]

Sec. 22-139. Definition.

Sec. 22-140. Designated areas.

Sec. 22-141. Notice signs.

Secs. 22-142—22-165. Reserved.

Sec. 22-139. Definition.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Tobacco product means any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco or dipping tobacco.

(Code 1993, § 50-106; Ord. No. 96-21, § 2.0, 12-16-1996)

Sec. 22-140. Designated areas.

(a) It is the policy of the city to maintain a tobacco-free workplace, except for certain designated areas within which the use of tobacco products is permitted.

(b) It shall be unlawful for any person to use a tobacco product within the following public buildings:

(1) The city hall;

(2) The police department;

(3) The fire department;

(4) The public works service center; and

(5) The city community center;

Except that tobacco products may be used within the areas designated by signs as "Tobacco Use Permitted in This Area."

(c) Further, it shall be unlawful for any person to use a tobacco product outside of the following city-owned or controlled public buildings and while on the city-owned or controlled property upon which such public buildings are located, with the exceptions noted in this section:

(1) The city hall;

(2) The police department;

(3) The fire department;

(4) The public works service center; and

(5) The city community center;

Except that tobacco products may be used within the areas designated by signs as "Tobacco Use Permitted in This Area."

(c) Provided, however, persons who are not employees or public officers of the city, including off-duty employees or public officers of the city, are expected from this prohibition while they are actually on a sidewalk, or the street, or in a parking lot adjoining such public buildings.

(d) It shall be unlawful for any person to use a tobacco product within any city owned or controlled (leased or rented) vehicle.

(Code 1993, § 50-107; Ord. No. 96-21, § 2.0, 12-16-1996)

Sec. 22-141. Notice signs.

Signs shall be placed in and around each building, and on the adjoining city property, to give notice that the use of tobacco products is prohibited, as stated in section 22-140, except that tobacco products may be used within the areas designated by signs as "Tobacco Use Permitted in This Area." Other than the areas designated "Tobacco Use Permitted in This Area," there are no other areas designated as "tobacco use permitted," "smoking areas," or as "smoking permitted." The city manager, or the manager's

designee, and the appropriate department head are hereby authorized to designate such permitted use areas.

(Code 1993, § 50-108; Ord. No. 96-21, § 3.0, 12-16-1996)

Secs. 22-142—22-165. Reserved.

FOOTNOTE(S):

--- (**5**) ---

State Law reference— Texas Clean Air Act, V.T.C.A., Health and Safety Code ch. 382; smoking tobacco prohibited in certain public places, V.T.C.A., Penal Code § 48.01. (Back)

ARTICLE VI. PROHIBITED SMOKING PARAPHERNALIA AND SMOKING PRODUCTS

Sec. 22-166. Definitions.

Sec. 22-167. Offenses.

Sec. 22-168. Affirmative defenses.

Secs. 22-169—22-189. Reserved.

Sec. 22-166. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Illegal smoking paraphernalia means any equipment, material, object, or product that is used or intended for use in ingesting, inhaling, or otherwise introducing an illegal smoking product into the human body, including a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl; a water pipe; a carburetion tube or device; a smoking or carburetion mask; a chamber pipe; a carburetor pipe; an electric pipe; an air-driven pipe; a chillum; a bong; or an ice pipe or chiller.

Illegal smoking product means any plant or other substance, whether described as tobacco, herbs, incense, spice, or any blend thereof, regardless of whether the substance is marketed for the purpose of being smoked, that includes any one or more of the following substances or chemicals:

(1) Salvia divinorum or salvinorin A; all parts of the plant presently classified botanically as salvia divinorum, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture or preparation of such plant, its seeds or extracts or similar structural analogs;

(2) 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol (also known as CP47,497) and homologues or similar structural analogs;

(3) (6aS,10aS)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10, 10a-tetrahydrobenzo[c]chromen-1-ol (also known as HU-211 or dexanabinol) or similar structural analogs;

(4) 1-pentyl-3-(1-naphthoyl)indole (also known as JWH-018) or similar structural analogs;

(5) 1-butyl-3-(1-naphthoyl)indole (also known as JWH-073) or similar structural analogs; or

(6) 4-methoxynaphthalen-1yl-(1-pentyindol-3-yl) (also known as JWH-081) or similar structural analogs.

The term "illegal smoking products" include the products marketed under the following commercial names: Blaze, Dascents, Diablo, Fire N' Ice, Genie, K-2, K-2 summit, K-2 Sex, KO Knock-Out 2, Mojo, Pandora Potpourri, Pep Spice, Sage, Salvia Divinorum, Sense, Silver, Skunk, Solar Flare, Spice, Spice Cannabinoid, Spice Diamond, Spice Gold, Spicy Green, Yucatan Fire, and Zohai.

(Ord. No. 2010-24, § 2(42-140), 12-6-2010)

Sec. 22-167. Offenses.

A person commits an offense if the person:

(1) Uses, possesses, purchases, barters, gives, delivers, publicly displays, sells, or offers for sale any illegal smoking product; or

(2) Uses or possess any illegal smoking paraphernalia with the intent to inject, ingest, inhale, or otherwise introduce into the human body an illegal smoking product.

(Ord. No. 2010-24, § 2(42-141), 12-6-2010)

Sec. 22-168. Affirmative defenses.

It shall be an affirmative defense for a person charged with an offense under section 22-167 that:

(1) The use or possession was pursuant to the direction or prescription of a licensed physician or dentist authorized to direct or prescribe such act;

(2) The sale or possession of salvinorin A was in conjunction with ornamental landscaping and used solely for that purpose; or

(3) The use or possession was by an employee or agent of a governmental entity who is acting in the course and scope of the employee's or agent's duties and whose use or possession is in compliance with the applicable procedures established by the governmental entity for the use or possession of the product.

(Ord. No. 2010-24, § 2(42-142), 12-6-2010)

Secs. 22-169—22-189. Reserved.

ARTICLE VII. DONATION CONTAINERS

Sec. 22-190. Definitions.

Sec. 22-191. Location.

Sec. 22-192. Container design and maintenance.

Sec. 22-193. Proper use and removal of materials.

Sec. 22-194. Permit required.

Sec. 22-195. Penalty.

Sec. 22-190. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Donation container means any container, receptacle, or similar device that is located on any lot within the city and that is used for soliciting and collecting donations of clothing or other salvageable personal property. The term "donation container" does not include paper-recycling bins for the collection of recyclable material that are screened and placed in accordance with chapter 48, Zoning, as refuse container or any donation container located within a building.

(Ord. No. 2013-04, § 1(42-139), 4-15-2013)

Sec. 22-191. Location.

(a) Donation containers shall be limited to office, retail, and commercial zoning districts and shall be subject to approval by a temporary permit with a maximum duration of one year.

(b) Donation containers are allowed in planned developments when expressly included in the listed uses and allowances.

(c) Donation containers shall not be within 50 feet of property being used for residential purposes or a public-right-of-way.

(d) Donation containers shall not be located within any established buffer areas, required landscaped area, sidewalks, access easements, and drainage easements, drive aisles, utility easements, or fire lanes and shall not be located in such a manner that they block sight lines or impede vehicular or pedestrian traffic.

(e) Donation containers shall be located on a paved surface.

(f) A donation container shall not be located in any parking space required to meet the minimum parking requirements for a site.

(g) The number of donation containers allowed for each lot shall not exceed two and shall not be located less than 300 feet from any other donation container, except as required in subsection (h) of this section.

(h) On lots with more than one donation container, the donation containers on that lot shall be placed adjacent to each other with no more than two feet of separation between containers. These containers shall not be located less than 300 feet from containers on any other lot.

(Ord. No. 2013-04, § 1(42-140), 4-15-2013)

Sec. 22-192. Container design and maintenance.

(a) The donation container shall not exceed 96 cubic feet and shall not be larger than four feet wide by four feet deep by six feet tall. The donation containers shall be fully enclosed.

(b) Donation containers shall be painted or stained with a neutral or earth-tone color scheme. Bright primary, fluorescent, or contrasting colors are prohibited.

(c) Unless required by other provisions, no specific landscaping, screening fences, or walls are required around donation containers, but aesthetically pleasing site design considerations are encouraged.

(d) The donation container shall display a sign, not to exceed two square feet, containing only the following information:

(1) Permit holder's current contact information, including street address and telephone number.

(2) If permit holder is not the operator of the donation container, the operator's contact information including street address and telephone number must also be included.

(3) The city code enforcement division's street address and phone number.

(4) A note indicating allowable items.

(5) A note indicating hazardous materials and illegal dumping prohibited.

(6) The sign may contain the trademark or logo of the nonprofit organization benefitting from the container. The sign shall be in a neutral color with black lettering. No other signage is allowed.

(e) Donation containers shall be maintained in good condition and appearance with no structural damage, holes, or visible rust.

(Ord. No. 2013-04, § 1(42-141), 4-15-2013)

Sec. 22-193. Proper use and removal of materials.

(a) The donation container shall only be used as a collection container for clothing and household materials. All donation materials must fit into and be placed inside the donation container. The collection or storage of any materials outside the container is prohibited.

(b) The permit holder shall be responsible to collect the contents of the donation container as needed to prevent overflow, but at least once every two weeks.

(c) Items not properly placed in the container must be removed within 24 hours from deposit. Both the property owner and the permit holder are subject to enforcement action for materials not properly placed in the donation container.

(Ord. No. 2013-04, § 1(42-142), 4-15-2013)

Sec. 22-194. Permit required.

(a) The owner of a donation container shall apply for a permit from the city and submit a fee for each donation container as currently established or as hereafter adopted from time to time by resolution of the city council.

(b) The permit applicant must have the written authorization from the business owner on whose property the donation container will be placed.

(c) The permit holder shall employ a staff of full-time or paid drivers to collect the contents of the donation container.

(d) The donation container must be owned or operated on behalf of an organization registered and operating in the state as a nonprofit (501(c)3) corporation.

(e) The permit holder must maintain general liability insurance for each donation container, at a minimum level of $1,000,000.00, holding the city and business owner harmless.

(f) Provided that the conditions in subsections (a) thru (e) of this section are met, each permit shall be valid for a period of 12 months, from the date first issued.

(g) Each application must include a diagram of the proposed location, including any screening or landscaping proposed.

(h) The location and specific site design features of the donation container placement must be approved by the city manager or his/her designee.

(i) The permit holder and the property owner shall be jointly and severally liable for any violations of this article.

(j) More than three complaints, in a one-year period, regarding a specific donation container, shall result in the permit being revoked. The complaints must be validated as being legitimate by the city code enforcement officer.

(k) Unless otherwise said within, approval of a permit for said operation shall not exempt the use or permit holder from all applicable city ordinances including, but not limited to nuisance, signage, lighting, etc.

(l) All existing donation containers must comply with this article within 60 days of the effective date of the ordinance from which this article is derived.

(Ord. No. 2013-04, § 1(42-143), 4-15-2013)

Sec. 22-195. Penalty.

(a) Any donation container in violation of this article is subject to impoundment by the city. Impounded containers shall be released to the owner upon payment of an impound fee and a daily storage fee for each day in the city's possession after impound, which fees shall be as currently established or as hereafter adopted from time to time by resolution of the city council. An impounded donation container not claimed within 30 days will be considered abandoned and may be destroyed without notice from the city.

(b) Any person who shall violate any provision of this article or fail to comply therewith shall be punished by a fine not to exceed $2,000.00. Each day the violation occurs shall constitute a distinct and separate offense.

(Ord. No. 2013-04, § 1(42-144), 4-15-2013)

Chapter 23 RESERVED

Chapter 24 LAW ENFORCEMENT [1]

ARTICLE I. - IN GENERAL

ARTICLE II. - POLICE DEPARTMENT

ARTICLE III. - POLICE RESERVE FORCE

FOOTNOTE(S):

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State Law reference— Law enforcement officers, V.T.C.A., Occupations Code ch. 1701; municipal law enforcement, V.T.C.A., Local Government Code ch. 341; law enforcement services provided through cooperation of local governments, V.T.C.A., Local Government Code ch. 362; penal provisions, V.T.C.A., Penal Code ch. 1 et seq., V.T.C.A., Transportation Code ch. 1 et seq. (Back)

ARTICLE I. IN GENERAL

Secs. 24-1—24-18. Reserved.

Secs. 24-1—24-18. Reserved.

ARTICLE II. POLICE DEPARTMENT [2]

Sec. 24-19. Composition.

Sec. 24-20. Residency requirements.

Sec. 24-21. Hiring.

Sec. 24-22. Oath and code of ethics.

Sec. 24-23. Bonds.

Sec. 24-24. Probation and certification.

Sec. 24-25. Supervisors.

Sec. 24-26. Reports.

Sec. 24-27. Rules Manual.

Sec. 24-28. Powers and rights.

Sec. 24-29. Termination of employment and suspension.

Secs. 24-30—24-48. Reserved.

Sec. 24-19. Composition.

The police department shall consist of a chief of police and such additional number of officers as the city council may, through budgeting, authorize.

(Code 1978, § 20-17; Code 1993, § 58-26)

Sec. 24-20. Residency requirements.

The chief of police and all police officers must be residents of the county or residents of any county adjoining the county.

(Code 1978, § 20-18; Code 1993, § 58-27)

Sec. 24-21. Hiring.

(a) *Procedure.* Hiring procedures shall be as per city personnel policies.

(b) *Qualifications.* All applicants must meet the minimum standards of the state commission on law enforcement officer's standards and education.

(Code 1978, § 20-19; Code 1993, § 58-28)

Sec. 24-22. Oath and code of ethics.

In addition to the statutory oath of office, the chief of police and each officer will pledge themselves to the law enforcement code of ethics as follows:

> "As a law enforcement officer, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all men to liberty, equality and justice.
>
> "I will keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or what is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.
>
> "I will never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.
>
> "I will recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the law enforcement service. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession … Law Enforcement."
>
> (Code 1978, § 20-20; Code 1993, § 58-29)

Sec. 24-23. Bonds.

The chief of police and all police officers shall give bond for the faithful performance of their duties as the city council may from time to time require. Such schedule of bonds and the amounts thereof shall by a separate regulation be adopted by the city council.

(Code 1978, § 20-21; Code 1993, § 58-30)

Sec. 24-24. Probation and certification.

The chief of police and all police officers hired by the city shall be considered to be on probation for the first six months of their employment. Each such officer shall, within one year from the date of his employment by the city, if he is not already certified, take the necessary courses of study and training so as to receive a certification from the state commission on law enforcement officers. In addition, all such officers shall continue such educational and training programs as the chief of police, in consultation with the city manager and upon authorization by the city council, may from time to time require.

(Code 1978, § 20-22; Code 1993, § 58-31)

Sec. 24-25. Supervisors.

The chief of police, in consultation with the city manager, shall from time to time appoint such supervisory officers as in his judgment shall be necessary for the efficient operation of the police department. Such supervisory officers and the promotion of personnel thereto shall be in accordance with training programs, longevity of service and rules and regulations as shall be set forth by the chief of police in consultation with the city manager. At a minimum, there shall always be such supervisory officers such as sergeants, lieutenants, and captains, so that at all times, in the absence or the disability of the chief of police, the police department will have supervision.

(Code 1978, § 20-23; Code 1993, § 58-32)

Sec. 24-26. Reports.

The chief of police shall from time to time, as may be required by the city council, make written report on the activities and personnel of the police department, submitting same to the manager for presentation to the city council.

(Code 1978, § 20-25; Code 1993, § 58-34)

Sec. 24-27. Rules Manual.

There is hereby adopted the Rules Manual of the police department, same being attached to the ordinance from which this chapter is derived and incorporated by reference. All rules, regulations and standards of conduct set forth therein shall be strictly adhered to by all members of the police department.

(Code 1978, § 20-26; Code 1993, § 58-35)

Sec. 24-28. Powers and rights.

All police officers shall have like powers, rights and authority as are by statute vested in city marshals.

(Code 1978, § 20-27; Code 1993, § 58-36)

Sec. 24-29. Termination of employment and suspension.

Termination of employment and suspension shall be conducted as per personnel policies.

(Code 1978, § 20-28; Code 1993, § 58-37)

Secs. 24-30—24-48. Reserved.

FOOTNOTE(S):

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Charter reference— Police department, § 7.03. (Back)

ARTICLE III. POLICE RESERVE FORCE

Sec. 24-49. Established.

Sec. 24-50. Number of members.

Sec. 24-51. Appointment.

Sec. 24-52. Training standards.

Sec. 24-53. Active service.

Sec. 24-54. Benefits.

Sec. 24-55. Reserve force no bar to special force.

Sec. 24-49. Established.

There is hereby established a police reserve force for the city.

(Code 1978, § 20-41; Code 1993, § 58-61)

Sec. 24-50. Number of members.

The police reserve force shall not exceed in number the total number of regular police officers authorized.

(Code 1978, § 20-42; Code 1993, § 58-62)

Sec. 24-51. Appointment.

Members of the police reserve force shall be appointed and/or relieved at the discretion of the chief of police with the approval of the city manager and shall serve as police officers during the actual discharge of official duties.

(Code 1978, § 20-43; Code 1993, § 58-63)

Sec. 24-52. Training standards.

(a) Reserve police officers must comply with the minimum training standards established by the state commission on law enforcement officer standards and education minimum standards established for all reserve law enforcement officers identical to the standards so established which must be fulfilled before a person appointed as a reserve law enforcement officer may carry a weapon or otherwise act as a peace officer. The city council shall establish qualifications and standards of training for members of the police reserve force and shall establish rules and regulations governing reserve police officers.

(b) The chief of police may establish minimum physical, mental, educational and moral standards as used by the regular police department, but in no case shall the standards be less than those established by the state commission on law enforcement officer standards and education.

(Code 1978, § 20-44; Code 1993, § 58-64)

Sec. 24-53. Active service.

Members of the police reserve force shall serve at the discretion of the chief of police and may be called into active service at any time the chief of police considers it necessary to have additional police officers to preserve the peace and enforce the law.

(Code 1978, § 20-45; Code 1993, § 58-65)

Sec. 24-54. Benefits.

Members of the police reserve force shall serve without compensation. Uniforms and uniform compensation may be provided to the reserve police officers at the discretion of the chief of police. The uniform compensation shall be based solely upon the time served by the member of the police reserve while in training or in the performance of official duties. The city will not provide group hospital or group medical assistance to members of the police reserve who sustain injuries in the course of performing official duties. However, nothing in this section shall prevent or exclude such officers from receiving workers' compensation benefits from and through the city. Reserve officers shall be eligible for death benefits as set out in V.T.C.A., Government Code ch. 615; however, nothing in this article shall be construed to authorize or permit a member of the police reserve force to become eligible for participation in any pension fund created pursuant to state statute, of which regular officers may become a member by payroll deductions or otherwise. Reserve police officers shall act only in a supplementary capacity to the regular police force and shall in no case assume the full-time duties of regular police officers.

(Code 1978, § 20-46; Code 1993, § 58-66)

Sec. 24-55. Reserve force no bar to special force.

This action does not limit the power of the manager to summon into service a special police force as provided by V.T.C.A., Local Government Code § 341.011.

(Code 1978, § 20-47; Code 1993, § 58-67)

Chapter 25 RESERVED

Chapter 26 MANUFACTURED HOMES, MOBILE DWELLING STRUCTURES, AND RECREATIONAL VEHICLES [1]

ARTICLE I. - IN GENERAL

ARTICLE II. - MANUFACTURED HOMES AND MANUFACTURED HOME PARKS

ARTICLE III. - RECREATIONAL VEHICLES, TRAVEL TRAILERS, MOTOR HOMES, DEPENDENT TRAILERS AND OTHER MOBILE STRUCTURES

FOOTNOTE(S):

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State Law reference— Texas Manufactured Housing Standards Act, V.T.C.A., Occupations Code ch. 1201. (Back)

ARTICLE I. IN GENERAL

Sec. 26-1. Definitions.

Sec. 26-2. Nonconforming manufactured home parks.

Secs. 26-3—26-22. Reserved.

Sec. 26-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Camper means any enclosed structure intended for human habitation for short periods of time and mounted on any manufactured pickup truck, flatbed vehicle, or on wheels and not exceeding 12 feet between axles.

Dependent trailer means a trailer which is dependent upon a service building for toilet and lavatory facilities, such as a pop-up camper.

Hard surface means a surface capable of supporting a vehicle upon which, when wet, the vehicle will not sink in or make an indention. For the purposes of this chapter, the term "hard surface" means a surface of concrete or asphaltic concrete with gravel base capable of carrying vehicular traffic without deteriorating.

HUD-Code manufactured home means a structure, constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development (HUD), transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes plumbing, heating, air conditioning and electrical systems.

License means a written license issued by the city permitting a person to operate and maintain a manufactured home park or recreational vehicle park under the provisions of this chapter.

Licensee means any person licensed to operate and maintain a manufactured home park or recreational vehicle park under the provisions of this chapter.

Manufactured home means a HUD-Code manufactured home or a mobile home and collectively means and refers to both. For the purposes of this chapter, a mobile home shall not mean a HUD-Code manufactured home and a HUD-Code manufactured home shall not mean a mobile home. Also, for purposes of this chapter, the term "manufactured home" shall not include recreational vehicles.

Manufactured home park means any lot, tract or parcel of land used in whole or in part to provide facilities and accommodations for two or more manufactured homes for the convenience of its residences, whether by the day, week or for longer periods of time, and with or without compensation.

Mobile home means a structure that was constructed before June 15, 1976, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes plumbing, heating, air conditioning and electrical systems.

Motor home means a portable temporary dwelling, designed for living, sleeping, storage or working quarters, meant to be used for travel, recreation or vacation, constructed as an integral part of a self-propelled vehicle eight body feet or more in width and 40 body feet or more in length, built on a permanent chassis, and designed to be used as a dwelling without a permanent foundation when connected to required utilities for plumbing, heating, air conditioning and electrical systems.

Parking space means a space of not less than 12 feet in width and 20 feet in length.

Permit means a written permit or certification issued by the city building official permitting the construction, alteration, extension, or operation of a manufactured home park or recreational vehicle park under the provisions of this chapter.

Pickup coach means a structure designed to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation or vacation.

Recreational vehicle means any vehicle or similar portable structure designed for living, sleeping, storing or working quarters, including, but not limited to, travel trailers, pickup coaches, motor homes, dependent trailers, and self contained trailers.

Recreational vehicle park means any lot, tract or parcel of land used in whole or in part to provide facilities and accommodations for two or more recreational vehicles used by transients as living or sleeping quarters, whether by the day, week or for longer periods of time, and with or without compensation.

Sanitary station or *dump facility* means a facility used for removing and disposing of wastes from dependent or self-contained recreational vehicle holding tanks.

Self-contained trailer means a trailer which can operate independently of connections to sewer, water and electric systems, which contains a water-flushed toilet, lavatory, shower and kitchen sink, all of which are connected to water storage and sewage holding tanks located within the trailer.

Service building means a structure housing a toilet, lavatory, showers and other facilities as may be required by this chapter.

Service sink means a slop sink with a slush rim for the disposal of liquid wastes from dependent or self-contained recreational vehicles.

Sewer connection means the connection, consisting of all pipes, fittings and appurtenances, from the drain outlet of a manufactured home or a recreational vehicle to the inlet of the corresponding sewer service riser pipe of the sewage system serving the manufactured home park or the recreational vehicle park.

Sewer service riser pipe means that portion of a sewer service which extends vertically to the ground elevation and terminates at a manufactured home unit or recreational vehicle unit.

Travel trailer means a vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational or vacation uses, and permanently identified as a travel trailer by its manufacturer. Its gross weight shall not exceed 4,500 pounds, and its overall length, excluding the tongue, shall not exceed 34 feet. The term "travel trailer" shall also include, by definition, all other portable contrivances, other than mobile homes and campers, used or intended to be used generally for living, sleeping, storing or working quarters and which may be moved under their own power, towed, or transported by another vehicle.

Unit means an area of ground in a manufactured home park or a recreational vehicle park, as applicable, set aside for the use of one manufactured home or one recreational vehicle, together with such parking and open space as required by this chapter. The term "unit" shall also include the terms "lot," "stand," and "site."

Water connection means the connection of all pipes, fittings and appurtenances, from the water riser pipe to the water inlet pipe, of the distribution system within a manufactured home park or a recreational vehicle park.

Water riser pipe means that portion of the private water service system serving a manufactured home or recreational vehicle which extends vertically to the ground elevation and terminates at a designated point at a unit.

Watering station means a facility for supplying potable water to storage tanks of dependent or self-contained recreational vehicles.

(Code 1993, § 46-21; Ord. No. 2000-04, § 2, 6-17-2000)

Sec. 26-2. Nonconforming manufactured home parks.

Manufactured home parks lawfully operating prior to the effective date of the ordinance from which this chapter is derived, but which do not conform to the regulations contained herein may be continued. Provided however, no such park shall be extended or enlarged and no such park shall be rebuilt or continued after abandonment or discontinuance for more than 90 days, except in full conformity with this chapter. Provided further, no such park shall be rebuilt in case of total destruction by fire or other causes except in conformity with the regulations contained in this chapter, and no such park which is partially destroyed by fire or other causes in excess of 50 percent of the value of the park's facilities shall restored, rebuilt, or repaired unless in conformity with this chapter.

(Code 1993, § 46-22; Ord. No. 2000-04, § 2, 6-17-2000; Ord. No. 2012-02, § 2, 2-20-2012)

Secs. 26-3—26-22. Reserved.

ARTICLE II. MANUFACTURED HOMES AND MANUFACTURED HOME PARKS

Sec. 26-23. Parking limitations; certificates and permits required; record of movement; inspection.

Sec. 26-24. Manufactured home parks—Construction or enlargement permits.

Sec. 26-25. Same—Operation permits.

Sec. 26-26. Technical and physical requirements.

Sec. 26-27. Water supply.

Sec. 26-28. Fire protection water distribution system for certain sized parks.

Sec. 26-29. Sewage disposal.

Sec. 26-30. Garbage service.

Sec. 26-31. Natural gas.

Sec. 26-32. Additional construction in parks.

Sec. 26-33. Service buildings.

Sec. 26-34. Park management.

Secs. 26-35—26-56. Reserved.

Sec. 26-23. Parking limitations; certificates and permits required; record of movement; inspection.

(a) It shall be unlawful for any person to park, place or locate any manufactured home upon any public street or public park within the city for a period of more than four hours, except in cases of emergency.

(b) It shall be unlawful for any person to park, place or locate any manufactured home on any lot, tract or parcel of land within the city for a period of more than 24 hours unless within a licensed manufactured home park, except as follows:

(1) On a lot, tract, or parcel of land upon which lawful construction of a commercial or multifamily building is actually in progress, and use of the manufactured home is incidental to such construction;

(2) On a lot, tract, or parcel of land within a platted residential subdivision when lawful construction of the subdivision improvements is actually in progress, or when construction of primary residential structures upon lots within such subdivision is actually in progress, and the use of the manufactured home is incidental to such construction;

(3) On a lot, tract, or parcel of land upon which is lawfully conducted the business of repairing manufactured homes, provided such manufactured home located thereon is being repaired and is not otherwise being used for living, sleeping, storage or working quarters; or

(4) On a lot, tract, or parcel of land upon which is lawfully conducted the business of selling manufactured homes, provided such manufactured homes located thereon are being offered for retail sale and are not otherwise being used for living, sleeping or storage, or as working quarters other than as a sales office for the homes offered for retail sale on such lot, tract, or parcel of land, and provided further, that no such manufactured home shall be stored or displayed unless upon a paved surface as provided herein. Such paved surface shall be of asphalt or concrete cement. An asphalt surface shall be not less than 1½ inches thick, with not less than six inches of limestone base. A concrete cement surface shall be not less than six inches thick with a stabilized base. All such paved surfaces shall be maintained so as to protect the structural integrity thereof.

Editor's note—

Section 2 of Ordinance No. 2001-17 provides that "The paving requirements established in subsection (b)(4) of this section shall not be required on lots used for the sale or display of manufactured homes on the effective date hereof. For the purposes of this section, a lot shall be deemed as being used for the sale or display of manufactured homes as of the date of application of the first of necessary building, construction or use permits for such use."

(c) It shall be unlawful for any person to occupy any manufactured home unless the building official shall have issued a certificate of occupancy therefor.

(d) Prior to parking, placing, or otherwise locating any manufactured home in the city, the owner of the land upon which the manufactured home is to be located, or the agent of such owner, shall obtain from the city a move-in permit which shall be obtained by making application on the form provided at the city hall. The city shall charge a reasonable fee for the issuance of such move-in permit, which fee is to be set from time to time by resolution of the city council and kept of record by the city secretary in the offices of the city.

(e) Prior to the issuance of a certificate of occupancy, each manufactured home shall be inspected and approved by the building official for the city in accordance with this chapter. The owner of the manufactured home shall pay the usual and customary charges for each of these inspections, which usual and customary charges shall be set by resolution of the city council from time to time and kept on file by the city secretary in the offices of the city.

(f) It shall be unlawful for the owner of the land, or the agent of the owner of the land, to move a manufactured home from a location within the city without having first obtained a move-out permit from the city. Such move-out permit shall be obtained by making application to the city on the form provided therefor, and by paying a reasonable fee for such move-out permit, which fee shall be set by resolution of the city council and kept on file in the offices of the city secretary.

(Code 1993, § 46-26; Ord. No. 2000-04, § 2, 6-17-2000; Ord. No. 2001-17, §§ 1, 2, 12-17-2001)

Sec. 26-24. Manufactured home parks—Construction or enlargement permits.

(a) *Construction or enlargement unlawful without permit.* It shall be unlawful for any person to construct or enlarge a manufactured home park within the corporate limits of the city without having first obtained a manufactured home park construction or enlargement permit.

(b) *Application.* Any person desiring to construct or enlarge a manufactured home park shall file a written application for a manufactured home park construction or enlargement permit with the city building official. Such application shall be submitted on a form prepared by the city building official and shall include the following:

(1) The name and address of the person who will be in charge of the proposed park;

(2) A location map showing the location within the city of the proposed park at a scale of one inch equals 100 feet or larger;

(3) Preliminary plans and specifications sufficient to determine if the proposed park is in compliance with this chapter and all ordinances, building, plumbing and electrical codes in effect at the time application for the permit is made.

(c) *Action by city council on application.* Within 30 days after the complete application has been filed with the city building official, the city building official shall present the same to the city council. The city council shall act on each such application within a reasonable period of time. If the city council approves the application, the city building official shall issue to the applicant a manufactured home park construction or enlargement permit. If construction has not begun on the manufactured home park within 120 days from the date of approval of the permit, the permit shall be void and of no force and effect. If the city council disapproves the application, the city council shall state the reasons for disapproval and the city building official shall so notify the applicant.

(d) *Standards of construction.* No permit shall be granted under this chapter unless all plans and specifications for the proposed manufactured home park are in conformity with all building, plumbing and electrical codes, and other applicable ordinances in effect and adopted by the city at the time application is made for a permit, and all work performed under permits issued pursuant to this article shall likewise conform to such other ordinances.

(e) *Permanent residential structures.* No permit shall be issued for the construction or occupancy of a permanent residential structure in any manufactured home park, with the following exceptions:

(1) One existing residential structure may be retained or one new residential structure may be constructed for the occupancy of the owner or operator of the park.

(2) An existing residence may be converted to a clubhouse, community center or service building for use by the residents of the park.

(Code 1993, § 46-27; Ord. No. 2000-04, § 2, 6-17-2000)

Sec. 26-25. Same—Operation permits.

(a) *Operation without permit unlawful.* It shall be unlawful for any person to operate a manufactured home park within the city without a manufactured home park operation permit.

(b) *Issuance to new operations.* Any person desiring to operate a manufactured home park after construction or the enlargement has been completed shall, before the actual operation of the park has begun, apply to the city building official for an operation permit. The city building official or any city official or employee designated by him shall then inspect the completed facilities and, if the completed manufactured home park conforms in all respects to the plans and specifications as submitted with the application for the construction or enlargement permit, and the requirements of this chapter and other applicable ordinances, the city building official shall then issue to the operator a manufactured home park operation permit upon payment to the city of any and all applicable operation permit fees as may be set from time to time by resolution of the city council and kept of record by the city secretary in the offices of the city. Each such permit shall be valid up to and including December 31 of the calendar year for which it was issued, unless sooner suspended, revoked or surrendered in accordance herewith.

(c) *Renewals.* All operation permits shall expire each year on December 31. Each operator of a manufactured home park shall make application for a renewal permit on or before November 30 of

the calendar year preceding the year for which the renewal permit is to apply. If there has been no change in the facilities as reflected in the latest plans, specifications and/or plat on file with the city building official, or if any such changes are found by the building official to be in accordance with this chapter and all other ordinances of the city, and upon payment to the city of any and all applicable operation renewal permit fees as may be set from time to time by resolution of the city council and kept of record by the city secretary in the offices of the city, the city building official shall renew the operation permit for a period of one year, ending December 31.

(d) *Revocation and suspension of permits.* Any manufactured home park operation permit granted under the provisions of this article may be suspended or revoked by the city building official after due notice to the holder of such permit for any one or more of the following reasons:

(1) Operating the facilities in a manner contrary to the plans, specifications and/or plat on file with the city building official; or

(2) Operating the facility in violation of the rules, regulations, ordinances, or laws of the city, the state, or the United States.

(e) *Reinstatement.* Where an operation permit has been suspended, the same may be reinstated for the remaining period of time for which it was originally issued after the cause for suspension has been corrected and upon the payment of applicable reinstatement fees.

(Code 1993, § 46-28; Ord. No. 2000-04, § 2, 6-17-2000)

Sec. 26-26. Technical and physical requirements.

(a) *Unit size.* No unit shall be less than 4,000 square feet in area.

(b) *Street specifications.* Each manufactured home park shall have streets constructed of concrete, or hot mixed asphalt, at least 20 feet in width, and curbed and guttered in accordance with the applicable requirements of the city.

(c) *Parking spaces.* Each unit shall be provided with two off-street side-by-side parking spaces. No on-street parking shall be permitted. Parking areas shall be constructed of the same material as the adjoining street unless the adjacent street does not contain a hard surface. In such event the parking areas shall be constructed with materials so as to provide a hard surface.

(d) *Pads.* Each unit within a manufactured home park shall be provided with a concrete pad, to be constructed so that the pads will provide support and spaced as shown on the approved plat of the park.

(e) *Skirting.* Each manufactured home shall require a skirting which shall extend around the perimeter of the manufactured home and which shall completely enclose the area beneath the manufactured home, with the exception of manways. Manways shall be equipped with a door, which can be kept closed when not in use.

(f) *Storage buildings.* Each unit shall be provided with a storage building of not less than six feet in depth and eight feet in width, which building shall be weatherproof and constructed of durable materials.

(g) *Water lines and sewer connections.* Each unit shall be provided with water lines and sanitary sewer connections, subject to all applicable ordinances, rules and regulations of the city.

(h) *Public inspection.* Duly authorized representatives of the city shall be permitted access to the park, the street, utility lines and connections, and structures thereon, when performing city business, as a condition to the issuance, renewal, or suspension of a permit.

(i) *Fence.* A six-foot-high fence or wall, constructed of wood or masonry, shall be constructed on the two sides and rear of the manufactured home park, such fence or wall to be 95 percent impervious. A decorative enclosure, not less than five feet in height, shall be constructed along the front of the manufactured home park.

(j) *Utilities.* All utilities, including, but not limited to, electrical, telephone, television, and cable, shall be buried and shall conform to the ordinances of the city.

(k) *Space between manufactured homes.*

(1) *Distance setback requirements.* Each concrete pad and each manufactured home shall be placed so that there shall be:

a. *Sides.* A distance of at least 25 feet between each manufactured home;

b. *Rear.* A distance of at least 25 feet between the rear of each manufactured home and the back of the unit boundary;

c. *Front.* A distance of at least 25 feet between the front of each manufactured home to the front of the unit boundary;

d. *Distance to streets.* A distance of at least 25 feet between each manufactured home and the edge of any street within or without the manufactured home park.

(2) *Other city setback requirements.* No manufactured home shall be located so as to violate any setback requirement as may otherwise be established by ordinance or regulation with respect to the area in which the manufactured home park is located.

(l) *Tie-downs.* Each pad shall be equipped with a minimum number of tie-downs so that a tie-down exists for every six feet of a manufactured home.

(m) *Recreational area.* There shall be provided additional open space not to be considered part of the minimum unit size for use as recreational area in ratio of 100 square feet per unit. The recreational area shall be so located as to be free of traffic hazards and the ratio of length to width shall not exceed 5:1. In the event playground space is provided, it shall be so designated and shall be protected from traffic, thoroughfares, and parking areas. Such space shall be maintained in a sanitary condition and free of safety hazards.

(n) *Walkways.* Walkways not less than 36 inches wide and constructed of concrete or other masonry construction shall be provided between the park streets to all community facilities provided for park residents and to all service buildings.

(o) *Electrical service.* Each unit within the manufactured home park shall be provided with electrical service connections of at least 120/240 volt single-phase, 100 amps entrance capacity. Each service pole for each unit shall have fixed a permanent number, which number shall coincide with the number designated to that particular manufactured home by the park owner or operator.

(p) *Minimum size.* No manufactured home park shall be permitted within the city unless the same shall be at least three acres in area.

(q) *Soil and ground cover.* Exposed ground surfaces in all parts of every manufactured home park shall be protected with a vegetative growth that is capable of preventing soil erosion and of eliminating dust or shall be paved or covered with stone screening or other solid material.

(r) *Drainage.* The ground surface in all parts of the manufactured home park shall be graded and equipped to drain all surface water in a safe, efficient manner, and in accordance with applicable ordinances of the city.

(Code 1993, § 46-29; Ord. No. 2000-04, § 2, 6-17-2000)

Sec. 26-27. Water supply.

(a) An adequate supply of potable water for drinking and domestic purposes shall be provided by pipes to all buildings and units within the park, in accordance with applicable standards provided in building, fire, plumbing, and other codes of the city. Each unit shall be provided with a cold water tap at least four inches above the ground.

(b) One master water meter shall be installed at each manufactured home park, or a separate water meter installed at each unit, and the owner of the park and/or the occupant of the unit upon which a manufactured home is located shall be responsible for the payment of the water bill to the city.

(Code 1993, § 46-30; Ord. No. 2000-04, § 2, 6-17-2000)

Sec. 26-28. Fire protection water distribution system for certain sized parks.

Every owner or developer of every manufactured home park which is 300 feet or more in depth shall be required to install a fire distribution system as follows:

(1) The owner or developer shall design and construct a fire distribution system in a manner to provide adequate water flow for fire protection.

(2) The design, size and layout of the water distribution system shall comply in all respects with all applicable requirements of the state and the city and shall be approved by the director of public works.

(3) All materials and installations shall be in accordance with American Water Works Association Standards and with the city standards for same, shall be Class 150 or better and shall be approved by the director of public works.

(4) Fire hydrants shall be spaced in intervals not to exceed 300 feet as measured along the street or driveways. All mains and laterals shall be looped. Steamer connections shall be national fire standard threads. Barrel lengths for fire hydrants shall be four feet or longer.

(Code 1993, § 46-31; Ord. No. 2000-04, § 2, 6-17-2000)

Sec. 26-29. Sewage disposal.

(a) If city sewer trunk lines are adjacent to a boundary of the proposed park, the following regulations shall apply:

(1) Waste from showers, bathtubs, flush toilets, urinals, lavatories and slop sinks in service and other buildings within the park shall be discharged into a public sewer system in compliance with applicable ordinances.

(2) Each unit shall be provided with a sewer at least four inches in diameter, which shall be connected to receive the waste from the shower, bathtub, flush toilets, lavatory and kitchen sink of the manufactured home located on such unit and having any or all of such facilities. The sewer in each unit shall be connected to discharge the manufactured home waste into a public sewer system in compliance with applicable ordinances.

(3) If, on the date the city council approves the manufactured home park, public sanitary sewerage service is not available, subsection (b) of this section shall apply. If a public sanitary sewer system is placed adjacent to the manufactured home park subsequent to its development, the owner or operator of the manufactured home park shall install a sanitary sewer system within the park within 180 days after such public service becomes available.

(b) If there is not a public sewer system available adjoining the property line of such proposed park, then the licensee may install a septic tank system, after first having submitted plans and specifications therefor with his applications, which the plan of septic tank system shall be in full compliance with applicable regulations of the state and the city.

(Code 1993, § 46-32; Ord. No. 2000-04, § 2, 6-17-2000)

Sec. 26-30. Garbage service.

(a) *Owner compliance.* Each owner of a manufactured home park shall comply with all of the trash and garbage collection regulations of the city.

(b) *Collection.* A separate charge for each manufactured home shall be made for garbage collection, in accordance with the schedule of rates in the city. The owner or operator of the park and/or the owner or occupant of the unit shall be responsible for the payment of same.

(Code 1993, § 46-33; Ord. No. 2000-04, § 2, 6-17-2000)

Sec. 26-31. Natural gas.

(a) If natural gas distribution facilities from the city's gas system are adjacent to a boundary of an existing park or a proposed park, then manufactured homes and buildings within the park requiring fuel shall be connected to such natural gas system. All inter-gas systems, including any and all gas systems installed by or for manufactured home parks, shall meet the minimum standards of the state railroad commission for such gas systems and minimum standards of the city. All gas distribution systems within parks installed by or for parks shall comply with existing codes applicable to such systems. Failure to comply with applicable codes or failure to meet minimum standards, whether as to existing parks or new parks or new distribution systems shall result in the termination of gas supply to the system until it has been brought into compliance with such codes or minimum standards. If natural gas from the city gas system is available to the park from lines adjacent to the boundary of the existing or proposed park, no bottled gas or liquefied petroleum gas, or any other type of fuel may be used within such park by manufactured homes and other buildings.

(b) If natural gas from the city gas system shall not be available, bottled gas for cooking purposes shall not be used at individual manufactured homes unless containers are properly connected by copper or other suitable metallic tubing or such other tubing as may be allowed by federal and state rules and regulations. Such containers shall not be placed into operation until they have been inspected by the city and have been determined to comply with minimum standards of the state railroad commission and the ordinances of the city. All bottled gas cylinders shall be securely fastened in place. No cylinders containing bottled gas shall be located in a manufactured home or within five feet of a door thereof.

(c) If the city's natural gas distribution facilities are placed adjacent to the manufactured home park subsequent to its development, the owner or operator of the park shall connect to such system within 180 days from such availability, and otherwise comply with all of the terms of this section.

(Code 1993, § 46-34; Ord. No. 2000-04, § 2, 6-17-2000)

Sec. 26-32. Additional construction in parks.

It shall be unlawful for any person operating a manufactured home park or occupying a manufactured home to construct or permit to be constructed in such park, or in connection with such manufactured home, any additional structure, building or shelter in connection with or attached to the manufactured home; provided, however, awnings of canvas or metal, suitably constructed, may be attached to manufactured homes. In addition, portable, prefabricated, temporary rooms, for the purpose of increasing the living area, commonly called cabanas, may be attached to manufactured homes which meet the following requirements:

(1) Of metal only, fire-resistive, double-wall, mechanical joint panels; no welded joints between panels permitted;

(2) Strength of materials and structure to meet minimum standards of the city building code;

(3) Capable of being dismantled and removed from the site at the time the manufactured home to which it is accessory is moved;

(4) Finish and appearance to be as near the same as possible to the manufactured home to which it is accessory;

(5) The length must not exceed the length of the manufactured home to which it is accessory; and

(6) Only one such room per manufactured home shall be permitted.

(Code 1993, § 46-35; Ord. No. 2000-04, § 2, 6-17-2000)

Sec. 26-33. Service buildings.

(a) Service buildings and housing sanitation facilities, if provided, shall be permanent structures complying with all applicable provisions of this Code, city ordinances and state statutes regulating buildings, electrical installations and plumbing and sanitation systems.

(b) The service buildings shall be well-lighted at all times of the day and night, shall be well-ventilated with screened openings, shall be constructed of such moisture proof material, which may be painted woodwork, as shall permit repeated cleaning and washing, and shall be maintained at a temperature of at least 68 degrees Fahrenheit (20 degrees Celsius) during the period from October 1 to May 1. The floors of the service buildings shall be of water-impervious material.

(c) All service buildings and the grounds of the park shall be maintained in a clean, sanitary condition and kept free of any condition that will menace the health of any occupant or the public.

(Code 1993, § 46-36; Ord. No. 2000-04, § 2, 6-17-2000)

Sec. 26-34. Park management.

Each licensee of a manufactured home park shall perform or cause to be performed the following:

(1) Provide written notice to each park occupant of all provisions of this chapter applicable to such occupant;

(2) Maintain a register of park occupancy which shall contain the following information:

a. The name and address, and the dates of arrival and departure, of each park resident;

b. The registration data, including make, length and width, of each manufactured home in the park;

c. The location of each manufactured home within the park by unit number and street address;

(3) Furnish to the code enforcement officer or city building official, within ten days after January 1 of each year, a list of all manufactured home residents in the park as of January 1. The list shall contain the manufactured home owner's name and address, the make, length and width of the home, and the address or location description of each manufactured home within the park; and

(4) Maintain on the premises for inspection a map showing the location, size and depth of all utility, gas or other lines within the park.

(Code 1993, § 46-37; Ord. No. 2000-04, § 2, 6-17-2000)

Secs. 26-35—26-56. Reserved.

ARTICLE III. RECREATIONAL VEHICLES, TRAVEL TRAILERS, MOTOR HOMES, DEPENDENT TRAILERS AND OTHER MOBILE STRUCTURES

Sec. 26-57. Parking limitations; record of movement in and out of parks; inspections.

Sec. 26-58. Recreational vehicle parks—Construction or enlargement permits.

Sec. 26-59. Same—Operation permits.

Sec. 26-60. Technical and physical requirements.

Sec. 26-61. Water supply.

Sec. 26-62. Fire protection water distribution system for certain sized parks.

Sec. 26-63. Sewage disposal.

Sec. 26-64. Garbage service.

Sec. 26-65. Use of bottled gas or liquefied petroleum gas.

Sec. 26-66. Additional construction in recreational vehicle parks.

Sec. 26-67. Service buildings.

Sec. 26-68. Park management.

Sec. 26-69. Side-by-side operation of manufactured home and recreational vehicle parks.

Sec. 26-57. Parking limitations; record of movement in and out of parks; inspections.

(a) No person shall park, place or locate a recreational vehicle upon any public street, or within any area of a public park not designated for recreational vehicle usage, within the city for a period of more than four hours, except in cases of emergency.

(b) No person shall park, place or locate a recreational vehicle which is used for living quarters, or in which cooking is done, on any lot, tract or parcel of land for a period of more than 24 hours unless within a licensed recreational vehicle park, except as follows:

(1) Recreational vehicles may be parked on land owned by persons whose business is the repair of recreational vehicles; provided, however, that when they are so parked, their use for living, sleeping, storing or working quarters is prohibited.

(2) Recreational vehicles may be parked for storage purposes as long as such storage does not violate any deed restriction or other ordinance or regulation of the city.

(c) It shall be unlawful for any person to locate or maintain for occupancy any recreational vehicle other than in a duly licensed and lawful recreational vehicle park, except as set out herein.

(d) Prior to the allowing a recreational vehicle to be placed within a recreational vehicle park, the owner of the park shall cause such recreational vehicle to be registered on a check-in/check-out list. The check-in/check-out lists shall include the name and permanent address of the owner or occupant of the recreational vehicle, a description of the make, model, and license of the recreational vehicle, the length of stay, the condition of recreational vehicle, and number of occupants. Such list shall be kept in the offices of the park and available for review by the city's building officials during reasonable office hours.

(Code 1993, § 46-61; Ord. No. 2000-04, § 2, 6-17-2000)

Sec. 26-58. Recreational vehicle parks—Construction or enlargement permits.

(a) *Construction or enlargement unlawful without permit.* It shall be unlawful for any person to construct or enlarge a recreational vehicle park within the corporate limits of the city without having first obtained a recreational vehicle park construction or enlargement permit.

(b) *Application.* Any person desiring to construct or enlarge a recreational vehicle park shall file a written application for a recreational vehicle park construction or enlargement permit with the city building official. Such application shall be submitted on a form prepared by the city building official and shall include the following:

(1) The name and address of the person who will be in charge of the proposed park;

(2) A location map showing the location within the city of the proposed park at a scale of one inch equals 100 feet or larger;

(3) Preliminary plans and specifications sufficient to determine if the proposed park is in compliance with this chapter and all ordinances, building, plumbing and electrical codes in effect at the time application for the permit is made.

(c) *Action by city council on application.* Within 30 days after the complete application has been filed with the city building official, the city building official shall present the same to the city council. The city council shall act on each such application within a reasonable period of time. If the city council approves the application, the city building official shall issue to the applicant a recreational vehicle park construction or enlargement permit. If construction has not begun on the recreational vehicle park within 120 days from the date of approval of the permit, the permit shall be void and of no force and effect. If the city council disapproves the application, the city council shall state the reasons for disapproval and the city building official shall so notify the applicant.

(d) *Standards of construction.* No permit shall be granted under this article unless all plans and specifications for the proposed recreational vehicle park are in conformity with all building, plumbing and electrical codes, and other applicable ordinances in effect and adopted by the city at the time application is made for a permit, and all work performed under permits issued pursuant to this article shall likewise conform to such other ordinances.

(e) *Permanent residential structures.* No permit shall be issued for the construction or occupancy of a permanent residential structure within any recreational vehicle park, except as follows:

(1) One existing residential structure may be retained or one new residential structure may be constructed for the occupancy of the owner or operator of the park.

(2) An existing residence may be converted to a clubhouse, community center or service building for use by the residents of the park.

(Code 1993, § 46-62; Ord. No. 2000-04, § 2, 6-17-2000)

Sec. 26-59. Same—Operation permits.

(a) *Operation without permit unlawful.* It shall be unlawful for any person to operate a recreational vehicle park within the city without a recreational vehicle park operation permit.

(b) *Issuance to new operations.* Any person desiring to operate a recreational vehicle park after construction or enlargement has been completed shall, before the actual operation of the park has begun, apply to the city building official for an operation permit. The city building official or any city official or employee designated by him shall then inspect the completed facilities and, if the completed recreational vehicle park conforms in all respects to the plans and specifications as submitted with the application for the construction or enlargement permit, and the requirements of this article and other applicable ordinances, the city building official shall then issue to the operator a recreational vehicle park operation permit upon payment to the city of any and all applicable operation permit fees as may be set from time to time by resolution of the city council and kept on record by the city secretary in the offices of the city. This permit shall be valid up to and including December 31 or the year for which it was issued, unless sooner suspended, revoked or surrendered.

(c) *Renewals.* All operation permits shall expire each year on December 31. Each operator of a recreational vehicle park shall make application for a renewal permit on or before November 30 of the calendar year preceding the year for which the renewal permit is to apply. If there has been no

change in the facilities as reflected in the latest plans, specifications and/or plat on file with the city building official, or if any such changes are found by the building official to be in accordance with this article and all other ordinances of the city, and upon payment to the city of any and all applicable operation renewal permit fees as may be set from time to time by the resolution of city council and kept on record by the city secretary in the offices of the city, the city building official shall renew the operation permit for a period of one year, ending December 31.

(d) *Revocation and suspension of operation permits.* Any recreational vehicle park operation permit granted under the provisions of this article may be suspended or revoked by the city building official after due notice to the holder of such permit for any one or more of the following reasons:

(1) Failure to keep accurate check-in and check-out records.

(2) Operating the facilities in a manner contrary to the plans, specifications and/or plat on file with the city building official.

(3) Operating the facility in violation of the rules, regulations, ordinances, or laws of the city, the state or the United States.

(e) *Reinstatement.* Where an operation permit has been suspended, the same may be reinstated for the remaining period of time for which it was originally issued after the cause for suspension has been corrected and upon the payment of applicable reinstatement fees.

(Code 1993, § 46-63; Ord. No. 2000-04, § 2, 6-17-2000)

Sec. 26-60. Technical and physical requirements.

(a) *Unit size.* Each unit shall include a designated concrete recreational vehicle pad, which shall have a minimum size of nine feet by 40 feet, or 360 square feet, for the placement of each recreational vehicle.

(b) *Street specifications.* Each recreational vehicle park shall have hard surface streets, properly drained in accordance with the existing requirements of the city. All streets shall be at least 20 feet in width throughout.

(c) *Parking.* Each unit shall be provided with a minimum of one off-street parking space. No on-street parking shall be permitted. Parking areas shall be constructed of the same material as the adjoining street unless the adjoining street does not contain a hard surface. In such event the parking areas shall be constructed with materials so as to provide a hard surface.

(d) *Pads.* Each unit within a recreational vehicle park shall be provided with a concrete pad, a minimum of nine feet by 40 feet (360 square feet), to be constructed so that the pads will provide support and spaced as shown on the approved plat of the park. No recreational vehicle park within a recreational vehicle park shall be placed within such park except upon a pad.

(e) *No shared utility hookups.* Two recreational vehicles shall not be permitted to share a unit or to share utility hookups.

(f) *Water lines and sewer connections.* Each unit shall be provided with water lines and sanitary sewer connections, suitable for hookup to recreational vehicles, and subject to all applicable ordinances, rules and regulations of the city.

(g) *Public inspection.* Duly authorized representatives of the city shall be permitted access to the recreational vehicle park, the street, utility lines and connections, and structures thereon, when performing city business, as a condition to the issuance, renewal, or suspension of a permit.

(h) *Fence.* A six-foot-high fence or wall, constructed of wood or masonry, shall be constructed on the two sides and rear of the recreational vehicle park, such fence or wall to be 95 percent impervious. A decorative enclosure, not less than five feet in height, shall be constructed along the front of the recreational vehicle park.

(i) *Utilities.* All utilities, including, but not limited to, electrical, telephone, television, and cable, shall be buried and shall conform to the ordinances of the city.

(j) *Density and setback requirements.* Each recreational vehicle park shall comply with the following minimum density and setback requirements:

(1) *Distance to adjacent designated concrete recreational vehicle pad.* No portion of a designated concrete recreational vehicle pad shall be located nearer than 20 feet from an adjacent designated concrete recreational vehicle pad. Additional concrete pad space for vehicle parking and or outdoor tables will not be considered as part of the designated concrete recreational vehicle pad. When the concrete pad is larger than the minimum nine feet by 40 feet (or 360 square feet) required for the designated concrete recreational vehicle pad, a minimum nine feet by 40 feet (or 360 square feet) area will be designated as the recreational vehicle pad.

(2) *Maximum number of units per acre.* The total number of units within a recreational vehicle park shall not exceed 15 per acre. Partial acreage shall be calculated proportionately.

(3) *Other city setback requirements.* No recreational vehicle shall be located so as to violate any setback requirement as may otherwise be established by ordinance or regulation with respect to the area in which the recreational vehicle park is located.

(4) *Recreational area.* There shall be provided additional open space not to be considered part of the minimum unit size for use as recreational area in ratio of 100 square feet per unit, located in a central location within the park boundaries. The recreational area shall be so located as to be free of traffic hazards and the ratio of length to width shall not exceed 5:1. In the event playground space is provided, it shall be so designated and shall be protected from traffic, thoroughfares, and parking areas. Such space shall be maintained in a sanitary condition and free of safety hazards.

(5) *Electrical service.* Each unit within the recreational vehicle park shall be provided with electrical service connections of at least one 30-amp connection and one 50-amp connection. Each service pole for each unit shall have fixed a permanent number, which number shall coincide with the number designated to that particular recreational vehicle by the park owner or operator.

(6) *Minimum size.* No recreational vehicle park shall be permitted within the city unless the same shall be at least three acres in area.

(7) *Soil and ground cover.* Exposed ground surfaces in all parts of every recreational vehicle park shall be protected with a vegetative growth that is capable of preventing soil erosion and of eliminating dust or shall be paved or covered with stone screening or other solid material.

(8) *Drainage.* The ground surface in all parts of the recreational vehicle park shall be graded and equipped to drain all surface water in a safe, efficient manner, and in accordance with applicable ordinances of the city.

(Code 1993, § 46-64; Ord. No. 2000-04, § 2, 6-17-2000; Ord. No. 2012-02, § 3, 2-20-2012)

Sec. 26-61. Water supply.

(a) An adequate supply of potable water for drinking and domestic purposes shall be provided by pipes to all buildings units within the park in accordance with applicable standards provided in building, fire, plumbing, and other codes of the city. Each unit shall be provided with a cold water tap at least four inches above the ground, with a hookup connection suitable for such recreational vehicle.

(b) One master water meter shall be installed at each recreational vehicle park and the owner of the park shall be responsible for the payment of the water bill to the city.

(Code 1993, § 46-65; Ord. No. 2000-04, § 2, 6-17-2000)

Sec. 26-62. Fire protection water distribution system for certain sized parks.

Every owner or developer of every park which is 300 feet or more in depth shall be required to install a fire distribution system as follows:

(1) The owner or developer shall design and construct a fire distribution system in a manner to provide adequate water flow for fire protection.

(2) The design, size and layout of the water distribution system shall comply in all respects with applicable requirements of the state and the city and shall be approved by the director of public works.

(3) All materials and installations shall be in accordance with American Water Works Association Standards and with the city standards for same, and shall be Class 150 or better and shall be approved by the director of public works.

(4) Fire hydrants shall be spaced in intervals not to exceed 300 feet as measured along the street or driveways. All mains and laterals shall be looped. Steamer connections shall be national fire standard threads. Barrel lengths for fire hydrants shall be four feet or longer.

(Code 1993, § 46-66; Ord. No. 2000-04, § 2, 6-17-2000)

Sec. 26-63. Sewage disposal.

(a) If city sewer trunk lines are adjacent to a boundary of the proposed park, the following regulations shall apply:

(1) Waste from showers, bathtubs, flush toilets, urinals, lavatories and slop sinks in service and other buildings within the park shall be discharged into a public sewer system in compliance with applicable ordinances.

(2) Each unit shall be provided with a sewer at least four inches in diameter, which shall be connected to receive the waste from the shower, bathtub, flush toilets, lavatory and kitchen sink of the recreational vehicle located on such unit and having any or all of such facilities. The sewer in each unit shall be connected to discharge the recreational vehicle waste into a public sewer system in compliance with applicable ordinances.

(3) If, on the date the city council approves the recreational vehicle park, public sanitary sewerage service is not available, subsection (b) of this section shall apply. If a public sanitary sewer system is placed adjacent to the recreational vehicle park in the future, the owner or operator of the recreational vehicle park shall install a sanitary sewer system within the park within 180 days after such public service becomes available from the city.

(4) The owner or operator of the recreational vehicle park may provide a sanitary station or dump station to be used by owners of recreational vehicles occupying units within the park or by permitted citizens of the city/owners of recreational vehicles. Such sanitary station or dump station shall be built in accordance with city standards and specifications and must comply with the city's requirements for connection with the public sewer system. Wastes shall not be discharged into the public sewer system unless in compliance with applicable ordinances of the city, and the owner of the park shall be responsible for the payment of all applicable fees to the city therefor. The owner or operator of the recreational vehicle park shall keep accurate records of each and every use of such sanitary station.

(b) If there is not a public sewer system available adjoining the property line of such proposed park, then the licensee may install a septic tank system, after first having submitted plans and specifications therefor, which plans shall be in full compliance with applicable regulations of the state and the city.

(Code 1993, § 46-67; Ord. No. 2000-04, § 2, 6-17-2000)

Sec. 26-64. Garbage service.

(a) *Licensee compliance.* Each licensee of the recreational vehicle park shall comply with all of the trash and garbage collection regulations of the city.

(b) *Collection.* A single charge for the entire recreational vehicle park shall be made for garbage collection, in accordance with the schedule of rates in the city. The licensee of the park shall be responsible for the payment of same.

(Code 1993, § 46-68; Ord. No. 2000-04, § 2, 6-17-2000)

Sec. 26-65. Use of bottled gas or liquefied petroleum gas.

Bottled gas shall not be prohibited for use by individual recreational vehicles, provided that such gas is properly connected by copper or other suitable metallic tubing or such other tubing as may be allowed by federal and state rules and regulations; and such bottled gas shall not be placed into operation until the licensee of the park has indicated on the check-in/check-out list that such bottled gas has been inspected and has been determined to have met the minimum standards of the state railroad commission and the ordinances of the city. All bottled gas cylinders shall be securely fastened in place. No cylinders containing bottled gas shall be located in a recreational vehicle or within five feet of a door thereof. At all times, all state and local regulations applicable to the handling of the bottle gas and fuel oil shall be followed. All applicable provisions of this Code and other laws regulating the use of liquefied gas shall be complied with and this section shall not be construed so as to repeal such ordinances of this city or any part thereof.

(Code 1993, § 46-69; Ord. No. 2000-04, § 2, 6-17-2000)

Sec. 26-66. Additional construction in recreational vehicle parks.

It shall be unlawful for any person operating a recreational vehicle park or occupying a recreational vehicle to construct or permit to be constructed in such park, or in connection with such recreational vehicle, any additional structure, building or shelter in connection with or attached to the recreational vehicle; provided, however, awnings of canvas or metal, suitably constructed, may be attached to recreational vehicles, as well as portable, prefabricated, temporary rooms, for the express purpose of increasing manufactured home living area, commonly called a cabana, which meet the following requirements:

(1) Of metal only, fires-resistive, double-wall, mechanical joint panels; no welded joints between panels permitted;

(2) Strength of materials and structure to meet minimum standards of the city building code;

(3) Capable of being dismantled and removed from the site at the time the recreational vehicle to which it is accessory is moved;

(4) Finish and appearance to be as near the same as possible to the recreational vehicle to which it is accessory;

(5) The length must not exceed the length of the recreational vehicle to which it is accessory; and

(6) Only one such room per recreational vehicle shall be permitted.

(Code 1993, § 46-70; Ord. No. 2000-04, § 2, 6-17-2000)

Sec. 26-67. Service buildings.

(a) Service buildings and housing sanitation facilities, if provided, shall be permanent structures complying with all applicable provisions of this Code, city ordinances and state statutes regulating buildings, electrical installations and plumbing and sanitation systems.

(b) The service buildings shall be well-lighted at all times of the day and night, shall be well-ventilated with screened openings, shall be constructed of such moisture proof material, which may be painted woodwork, as shall permit repeated cleaning and washing, and shall be maintained at a temperature of at least 68 degrees Fahrenheit (20 degrees Celsius) during the period from October 1 to May 1. The floors of the service buildings shall be of water-impervious material.

(c) All service buildings and the grounds of the park shall be maintained in a clean, sanitary condition and kept free of any condition that will menace the health of any occupant or the public.

(d) A central service building containing the necessary toilet and other plumbing fixtures specified shall be provided in recreational vehicle parks which provide units for dependent recreational vehicles. Service buildings shall be conveniently located within a radius of approximately 300 feet to the spaces to be served.

(Code 1993, § 46-71; Ord. No. 2000-04, § 2, 6-17-2000)

Sec. 26-68. Park management.

Each licensee of a recreational vehicle park shall perform or cause to be performed the following:

(1) Provide written notice to each park occupant of all provisions of this article applicable to such occupant;

(2) Maintain a register of park occupancy which shall contain the following information:

a. The name and address, and the dates of arrival and departure, of each park resident;

b. Registration data, including make, length and width, of each recreational vehicle in the park;

c. The location of each recreational vehicle within the park by unit number and street address;

(3) Maintain on the premises for inspection a map showing the location, size and depth of all utility, gas or other lines within the park.

(Code 1993, § 46-72; Ord. No. 2000-04, § 2, 6-17-2000)

Sec. 26-69. Side-by-side operation of manufactured home and recreational vehicle parks.

Nothing contained herein shall prohibit the development or operation of a manufactured home park adjacent to a recreational vehicle park; provided, however, the existence of adjacent park operations shall not negate a licensee's duty to comply with all rules and requirements applicable to each park as stated herein. In addition, such adjacent parks shall be clearly separated by a street, alley, fence, wall, vegetative hedgerow, or other distinct demarcation; provided, further, adjacent parks may share required recreational areas and service buildings if such areas and buildings otherwise fulfill the requirements for each park as set forth herein.

(Code 1993, § 46-73; Ord. No. 2000-04, § 2, 6-17-2000)

Chapter 27 RESERVED

Chapter 28 MUNICIPAL COURT [1]

ARTICLE I. - IN GENERAL

ARTICLE II. - SPECIAL FUNDS

FOOTNOTE(S):

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State Law reference— Judicial branch, V.T.C.A., Government Code ch. 21 et seq.; municipal courts, V.T.C.A., Government Code ch. 29. (Back)

ARTICLE I. IN GENERAL

Sec. 28-1. Seal.

Sec. 28-2. Jurisdiction.

Sec. 28-3. Organization; alternate judges.

Sec. 28-4. Oath.

Sec. 28-5. Deputy clerks—Appointment.

Sec. 28-6. Same—Powers and duties.

Sec. 28-7. Rules of practice and procedure.

Sec. 28-8. Notice to appear tickets.

Sec. 28-9. Citations for violation of city codes and state laws.

Sec. 28-10. Compensation for jurors.

Sec. 28-11. Prosecutor.

Sec. 28-12. Court bailiffs.

Secs. 28-13—28-33. Reserved.

Sec. 28-1. Seal.

The municipal court shall have a seal having engraved thereon a star of five points in the center and words "Municipal Court in Tomball, Texas," around the margin thereof, which shall be used to authenticate the official acts of the clerk and of the judge, where the clerk or the judge is authorized or required to use the seal of office.

(Ord. No. 2010-12, § 1(24-1), 6-21-2010)

Sec. 28-2. Jurisdiction.

The municipal court shall have jurisdiction with the power to hear and determine all cases of violation of this Code, the ordinances of the city, and all other cases of which municipal courts are given jurisdiction, or allowed to take jurisdiction, by state law. The municipal court shall exist for the disposition of misdemeanor criminal matters arising within its jurisdiction under the laws of the state or this Code or any other ordinances of the city.

(Ord. No. 2010-12, § 1(24-2), 6-21-2010)

Sec. 28-3. Organization; alternate judges.

(a) *Council to appoint.* The judge and alternate judges of the municipal court shall be appointed by the city council.

(b) *Presiding judge.* The office of presiding judge of the municipal court is hereby created. The presiding judge is authorized to designate which judge shall preside over the court for any given session.

(c) *Alternate judges.* The offices of alternate or associate judge are hereby created. Each associate judge shall preside over the court when designated by the presiding judge.

(d) *Powers and duties.* Each judge shall be a magistrate and shall have all of the powers and authority prescribed by state law and the Charter and ordinances of the city. Each judge shall have the duties pertaining to the office of judge.

(e) *Terms of office.* The municipal court shall have a two-year term beginning on September 1 of each even-numbered calendar year and extending through August 31 of the next following even-numbered calendar year. The presiding judge shall serve for the specific term, or the unexpired portion thereof, of the municipal court. Each associate judge shall serve for a two-year term of office beginning on September 1 of each odd-numbered calendar year and extending through August 31 of the next odd-numbered calendar year. Removal of judges shall be governed by state law and the city Charter. All judges shall also serve after the expiration of their terms of office until their successor is appointed and shall have qualified; provided, however, that any judge who is not reappointed by the 91st day following the expiration of a term of office shall, absent action by the city council, continue to serve for another term of office.

(Ord. No. 2010-12, § 1(24-3), 6-21-2010)

Sec. 28-4. Oath.

The judges of the municipal court, prior to taking office, shall take the requisite oath of office required by the constitution and state law.

(Ord. No. 2010-12, § 1(24-4), 6-21-2010)

Sec. 28-5. Deputy clerks—Appointment.

There shall be appointed such number of deputy municipal court clerks as may be necessary for the municipal court to properly perform its functions. The appointment of deputy municipal court clerks shall be by the court administrator of the municipal court, with approval by the city secretary and/or city manager.

(Ord. No. 2010-12, § 1(24-5), 6-21-2010)

Sec. 28-6. Same—Powers and duties.

The deputy clerks of the municipal court shall perform all the duties and have all the powers bestowed upon clerks of municipal courts by state law. Any clerk or deputy clerk so appointed may act as the official clerk of the municipal court and perform all acts incident to such office.

(Ord. No. 2010-12, § 1(24-6), 6-21-2010)

Sec. 28-7. Rules of practice and procedure.

The rules of practice and procedure as prescribed by state law governing trials in the state justice of the peace courts shall govern the procedure and practice of the municipal court; and the judge and the city council may prescribe such additional rules of practice and procedure as may not be inconsistent with state law.

(Ord. No. 2010-12, § 1(24-7), 6-21-2010)

Sec. 28-8. Notice to appear tickets.

(a) Whenever a person is arrested for any violation of law punishable by a fine in the municipal courts of the city, the arresting officer may prepare a written notice to appear that shall require the person to appear in municipal court within ten days to answer the charges listed and shall contain the following information:

(1) Name of the person arrested.

(2) Address of the person arrested.

(3) Driver's license or other identification.

(b) The following information may be included for informational purposes, but shall not nullify any promise to appear:

(1) Date of violation.

(2) Place of violation.

(3) Offense charged.

(4) Name of arresting officer.

This subsection shall not preclude the filing of any additional charges nor the filing of another offense.

(c) Notice to appear, incorrect name and address.

(1) The above notice to appear described in this section shall only be a promise to appear and is not an admission of guilt.

(2) It shall be unlawful for the arrested person to violate his written notice to appear in municipal court, regardless of the disposition of the charges upon which the person originally arrested.

(3) It shall be unlawful for any person upon being issued a notice to appear to give the arresting officer other than the person's true name and correct address.

(d) The procedure in subsection (c) of this section shall not be applicable:

(1) When the person arrested demands an immediate appearance before a magistrate.

(2) When the arrested person shall refuse to sign the notice to appear or furnish any of the information in subsection (a) of this section.

(3) When the offense is a violation of the traffic laws or is covered by a specific provision of state law dictating the following of a procedure contrary to subsections (a) thru (c) of this section.

(e) The procedures in subsections (a), (b) and (c) of this section shall not be mandatory upon the arresting officer. The arresting officer shall have authority to consider all the circumstances relevant to the arrest and any police departmental regulations or policies in choosing whether or not to issue a notice to appear.

(Ord. No. 2010-12, § 1(24-8), 6-21-2010)

Sec. 28-9. Citations for violation of city codes and state laws.

(a) When any person is found in violation of any provision of the codes adopted by the city or of the laws of the state, an agent or employee of the city may, if the person agrees to sign a citation, issue a citation that shall require the person to appear in court within the time provided on the citation. The citation shall give the person at least ten days to answer any charge of violation of any provision of the codes adopted by the city.

(b) Signing the citation shall only be a promise to appear and is not an admission of guilt.

(c) It shall be unlawful for any person, upon being issued any citation, to give the city's agent or employee a false name or address.

(d) It shall be unlawful to fail to appear in municipal court within the time provided in the citation, provided the citation gave the person at least ten days to answer any charge of violation of any provision of the codes adopted by the city.

(e) The following information shall be contained on the citation:

(1) Name of the defendant;

(2) Address of the defendant;

(3) Driver's license or other identification.

(f) The following information may be included for informational purposes, but shall not nullify any promise to appear:

(1) Date of violation;

(2) Place of violation;

(3) Offense charged;

(4) The name of the person issuing the citation.

(g) Additional or other charges shall not be precluded by the issuance of citation.

(Ord. No. 2010-12, § 1(24-9), 6-21-2010)

Sec. 28-10. Compensation for jurors.

Each juror sworn to serve in a case pending in the municipal court shall be entitled to receive a fee as may be established by resolution of the city council from time to time for each day on which the person actually serves as such juror, to be paid out of the city treasury.

(Ord. No. 2010-12, § 1(24-11), 6-21-2010)

Sec. 28-11. Prosecutor.

The city attorney, or such other attorneys designated by the city manager with approval of the city council, may prosecute cases in the municipal court.

(Ord. No. 2010-12, § 1(24-12), 6-21-2010)

Sec. 28-12. Court bailiffs.

The city manager, upon the request of the judge, shall furnish one or more peace officers to serve as municipal court bailiffs during the convening of the court and when, in the judgment of the judge, a bailiff is necessary to maintain proper decorum during any court proceedings.

(Ord. No. 2010-12, § 1(24-13), 6-21-2010)

Secs. 28-13—28-33. Reserved.

ARTICLE II. SPECIAL FUNDS

DIVISION 1. - GENERALLY

DIVISION 2. - MUNICIPAL COURT TECHNOLOGY FUND

DIVISION 3. - JUVENILE CASE MANAGER FUND

DIVISION 1. GENERALLY

Sec. 28-34. Municipal court building security fund.

Secs. 28-35—28-50. Reserved.

Sec. 28-34. Municipal court building security fund.

(a) There is hereby created and established a municipal court building security fund (the "fund") pursuant to V.T.C.A., Code of Criminal Procedure art. 102.017.

(b) The municipal court is authorized and required to assess a municipal court building security fee (the "fee") as currently established or as hereafter adopted by resolution of the city council from time to time against all defendants convicted in a trial of a misdemeanor offense by the municipal court. Each misdemeanor conviction shall be subject to a separate assessment of the fee.

(c) The municipal court clerk is hereby authorized and required to collect the fee and to pay same to the city treasury. All fees so collected and paid over to the city treasury, shall be segregated in the fund.

(d) The fund shall be used only for the purpose of financing the purchase of security devices and/or services for the building housing the municipal court of the city. Security devices and/or services shall include any and all items described in V.T.C.A., Code of Criminal Procedure art. 102.017(d).

(e) The fund shall be administered by or under the direction of the city council.

(Ord. No. 2010-12, § 1(24-21), 6-21-2010)

Secs. 28-35—28-50. Reserved.

DIVISION 2. MUNICIPAL COURT TECHNOLOGY FUND

Sec. 28-51. Established.

Sec. 28-52. Establishment of amount of the fee and assessment and collection.

Sec. 28-53. Designated use of the fund and administration.

Secs. 28-54—28-69. Reserved.

Sec. 28-51. Established.

(a) There is hereby created and established a municipal court technology fund, here-in-now known as the fund, pursuant to V.T.C.A., Code of Criminal Procedure art. 102.0172.

(b) The fund may be maintained in an interest-bearing account and may be maintained in the general revenue account.

(Ord. No. 2010-12, § 1(24-22), 6-21-2010)

Sec. 28-52. Establishment of amount of the fee and assessment and collection.

(a) The fee shall be as currently established or as hereafter adopted by resolution of the city council from time to time.

(b) The fee for the municipal court technology fund shall be assessed and collected from the defendant upon conviction for a misdemeanor offense in the municipal court as a cost of court. A defendant is considered convicted if:

(1) A sentence is imposed on the person;

(2) The person is placed on community supervision, including deferred adjudication community supervision; or

(3) The court defers final disposition of the person's case.

(c) The fee shall be collected on conviction for an offense committed on or after November 1, 1999.

(d) The clerk of the court shall collect the fee and pay the fee to the treasurer of the city, who shall deposit the fee into the municipal court technology fund.

(Ord. No. 2010-12, § 1(24-23), 6-21-2010)

Sec. 28-53. Designated use of the fund and administration.

(a) The municipal court technology fund shall be used only to finance the purchase of or to maintain technological enhancements for the municipal court, including:

(1) Computer systems;

(2) Computer networks;

(3) Computer hardware;

(4) Computer software;

(5) Imaging systems;

(6) Electronic kiosks;

(7) Electronic ticket writers; and

(8) Docket management systems.

(b) The fund shall be administered by or under the direction of the city council.

(Ord. No. 2010-12, § 1(24-24), 6-21-2010)

Secs. 28-54—28-69. Reserved.

DIVISION 3. JUVENILE CASE MANAGER FUND

Sec. 28-70. Establishment of juvenile case manager fund.

Sec. 28-71. Establishment of amount of the fee and assessment and collection.

Sec. 28-72. Designated use of the fund and administration.

Sec. 28-70. Establishment of juvenile case manager fund.

(a) There is hereby created and established a juvenile case manager fund, here-in-now known as the juvenile case manager fund, pursuant to V.T.C.A., Code of Criminal Procedure art. 102.0174.

(b) The fund may be maintained in an interest-bearing account and may be maintained in the general revenue account.

(Ord. No. 2014-02, § 1, 1-6-2014)

Sec. 28-71. Establishment of amount of the fee and assessment and collection.

(a) The fee for the juvenile case manager fund shall be as currently established or as hereafter adopted by resolution of the city council from time to time.

(b) The fee shall be assessed and collected from the defendant upon conviction for a fine-only misdemeanor offense in the municipal court as a cost of court. A defendant is considered convicted if:

(1) A sentence is imposed on the defendant;

(2) The defendant receives deferred disposition, including deferred proceedings under V.T.C.A., Code of Criminal Procedure art. 45.052 or 45.053; or

(3) The defendant receives deferred adjudication in county court.

(c) The municipal court judge is authorized to waive the fee in the case of financial hardship.

(d) The fee shall be collected on conviction for an offense committed on or after January 31, 2014.

(e) The clerk of the court shall collect the fee and pay the fee to the city treasurer, who shall deposit the fee into the juvenile case manager fund.

(Ord. No. 2014-02, § 2, 1-6-2014)

Sec. 28-72. Designated use of the fund and administration.

(a) The fund shall be used only to finance the salary, benefits, training, travel expenses, office supplies, and other necessary expenses relating to the position of a juvenile case manager employed under V.T.C.A., Code of Criminal Procedure art. 45.056 in the city. The fund may not be used to supplement the income of an employee whose primary role is not that of a juvenile case manager.

(b) The fund shall be administered by or under the direction of the city council.

(Ord. No. 2014-02, § 3, 1-6-2014)

Chapter 29 RESERVED

Chapter 30 OFFENSES [1]

ARTICLE I. - IN GENERAL

ARTICLE II. - MINORS

FOOTNOTE(S):

--- (**1**) ---

State Law reference— V.T.C.A., Penal Code ch. 1 et seq. (Back)

ARTICLE I. IN GENERAL

Sec. 30-1. Discharge of weapons.

Secs. 30-2—30-20. Reserved.

Sec. 30-1. Discharge of weapons.

(a) It shall be unlawful for any person to discharge an air rifle or air pistol of any description, by whatever name known that by means of compressed air, compressed gas, springs, or any other means is capable of discharging shots, pellets or any solid object over any easement, street, alley, park, road, highway, right-of-way or over the private property line of someone other than his own without the written consent of such person, and provided such discharge does not violate any laws of the state.

(b) No person shall discharge any such air gun or air pistol on public school grounds, public parks, church grounds, or in cemeteries, unless the person has the written approval of the person in charge of such grounds, and provided such discharge does not violate any state laws.

(c) It shall be unlawful for any person within the corporate limits of the city to discharge any firearm, except in the exercise of a right conferred by law, including, but not limited to, the making of a lawful arrest, the lawful prevention of crime, the lawful exercise of the right of self-defense, the lawful protection of one's family and/or upon rifle range which is inspected and approved for safety of design and operation by the chief of police.

(Code 1978, § 13-3; Code 1993, § 50-3)

State law reference— Authority of municipality to regulate the discharge of firearms, V.T.C.A., Local Government Code § 217.003.

Secs. 30-2—30-20. Reserved.

ARTICLE II. MINORS

DIVISION 1. - GENERALLY

DIVISION 2. - CURFEW

DIVISION 3. - USE OF TOBACCO PRODUCTS

DIVISION 1. GENERALLY
Secs. 30-21—30-43. Reserved.

Secs. 30-21—30-43. Reserved.

DIVISION 2. CURFEW [2]
Sec. 30-44. Purpose.

Sec. 30-45. Definitions.

Sec. 30-46. Offenses.

Sec. 30-47. Defenses.

Sec. 30-48. Enforcement.

Sec. 30-49. Penalties.

Secs. 30-50—30-71. Reserved.

Sec. 30-44. Purpose.

It is the express purpose of this division to:

(1) Deter criminal conduct involving juveniles;

(2) Reduce the number of juvenile crime victims;

(3) Reduce injury from accidents involving juveniles;

(4) Reduce the additional time police officers are required to be in the field due to juvenile crime;

(5) Provide additional and more effective means and options for dealing with gang-related violence and crime;

(6) Reduce juvenile peer pressure to stay out late;

(7) Reduce juvenile peer pressure to participate in violent or criminal activities;

(8) Assist parents in the control of their children; and

(9) Make the city a better community and a safer place to live and work, to raise a family, and to grow up.

(Code 1993, § 50-71; Ord. No. 2004-02, § 1, 5-17-2004; Ord. No. 2007-05, § 1(50-71), 4-16-2007; Ord. No. 2010-04, § 1, 4-5-2010; Ord. No. 2013-02, § 2, 4-1-2013)

Sec. 30-45. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Curfew hours includes:

(1) 12:00 midnight on any day of the week until 6:00 a.m. of the following day; and

(2) 9:00 a.m. until 2:30 p.m. on Monday through Friday; provided however, the hours defined in this subsection (2) shall not be considered as curfew hours for minors not subject to compulsory school attendance pursuant to V.T.C.A., Education Code § 25.085, nor shall the hours defined in this subsection (2) be considered as curfew hours on days or during periods in which the school where the applicable minor is enrolled is closed, or classes for which the applicable minor is enrolled have been canceled under the order and direction of officials authorized to issue such orders and directives, or, if the applicable minor is a duly authorized home school student under applicable provisions of the state Education Code, on days or during periods in which such minor is not receiving educational instruction.

Emergency means and includes, but is not limited to, a fire, natural disaster, automobile accident, or any unforeseen situation requiring immediate action to prevent serious illness, bodily injury, or loss of life, or for the preservation of property.

Establishment means any privately owned place of business to which the public has access or is invited, including, but not limited to, any place of amusement or entertainment.

Guardian means a person who, under court order, is the guardian of the person of a minor or a public or private agency with whom a minor has been placed by a court.

Minor means any person under 17 years of age.

Operator means any individual, firm, association, partnership, entity or corporation operating, managing, or conducting the operation of any establishment. The term "operator" includes the members or partners of an association or partnership and the officers of a corporation.

Parent means a person who is a natural parent, adoptive parent or step-parent of a minor, or a person at least 18 years of age who is authorized by the parent or guardian of a minor or by court order to have the care and custody of such minor.

Police department means the city police department or any successor police department, and shall include any law enforcement agency working with the city through any interagency agreement.

Public place means any place to which the public or a substantial group of the public has access and shall include, but not be limited to, streets and highways, and the common areas of schools, hospitals, apartment houses, office buildings, transportation facilities, restaurants, theaters, game rooms, shops, shopping centers, or any other place that offers for sale services, merchandise or entertainment.

Remain means to linger, stay, or fail to leave premises, when requested to do so by a police officer or the owner, operator, or other person in control of the premises.

(Code 1993, § 50-72; Ord. No. 2004-02, § 1, 5-17-2004; Ord. No. 2007-05, § 1(50-72), 4-16-2007; Ord. No. 2010-04, § 1, 4-5-2010; Ord. No. 2013-02, § 2, 4-1-2013)

Sec. 30-46. Offenses.

(a) It shall be unlawful for any minor to knowingly remain, walk, run or stand, or operate or ride about in any motor vehicle or bicycle, in or upon any public place or on the premises of any establishment within the city during curfew hours.

(b) It shall be unlawful for the parent or guardian of a minor to knowingly permit, or by insufficient control allow, a minor to remain in or upon any public place or on the premises of any establishment within the city during curfew hours.

(c) It shall be unlawful for the owner, operator, or any employee of an establishment to knowingly allow a minor to remain upon the premises of the establishment during curfew hours.

(Code 1993, § 50-73; Ord. No. 2004-02, § 1, 5-17-2004; Ord. No. 2007-05, § 1(50-73), 4-16-2007; Ord. No. 2010-04, § 1, 4-5-2010; Ord. No. 2013-02, § 2, 4-1-2013)

Sec. 30-47. Defenses.

(a) It shall be a defense to prosecution under section 30-46 that a minor was:

(1) Accompanied by the minor's parent or guardian;

(2) On an errand at the direction of the minor's parent or guardian;

(3) In a motor vehicle involved in intrastate or interstate travel, and traveling through the city by a direct route between the point of departure and destination;

(4) Engaged in a lawful employment activity, or going directly to the employment activity or returning directly to the minor's residence from the employment activity;

(5) Involved in an emergency;

(6) On an errand made necessary by an illness, injury, or emergency;

(7) On the sidewalk abutting the minor's permanent residence or abutting the residence of a next-door neighbor of the minor's permanent residence if the neighbor did not complain to the police department about the minor's presence thereon;

(8) Attending a school, religious, government-sponsored or other civic activity supervised by adults and sponsored by an educational, religious, or governmental institution, civic organization, or other similar entity, or traveling directly to or returning from any such school, religious, governmental, or civic activity;

(9) Engaged in, participating in, or traveling to or from any event, function, or activity for which the application of section 30-46 would contravene the minor's rights protected by the United States Constitution including, but not limited to, First Amendment rights such as the free exercise of religion, freedom of speech, or the right of assembly; or

(10) Married or had been married or had disabilities of minority removed in accordance with V.T.C.A., Family Code ch. 31

(b) It is a defense to prosecution under section 30-46 that the minor has been directed by his parent or guardian to engage in a specific activity, or to carry out expressed instructions, during the time that the minor is actually engaged in fulfilling those directions or responsibilities.

(c) It is a defense to prosecution under section 30-46(c) that the owner, operator, or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and the minor refused to leave.

(Code 1993, § 50-74; Ord. No. 2004-02, § 1, 5-17-2004; Ord. No. 2007-05, § 1(50-74), 4-16-2007; Ord. No. 2010-04, § 1, 4-5-2010; Ord. No. 2013-02, § 2, 4-1-2013)

Sec. 30-48. Enforcement.

(a) Before taking any enforcement action under this division, a police officer shall ask the apparent offender's age and reason for being in the public place or establishment. The officer shall not issue a citation or make an arrest under this division unless the officer reasonably believes that an offense has occurred and that based on any response given, and other circumstances, no defense in section 30-47 is present.

(b) In lieu of issuing a citation or making an arrest, the police officer may, based on the circumstances, issue a warning notice to the minor, who shall be ordered to go home by the most direct means and

route. A copy of the warning notice shall be filed with the police department, and a letter shall then be promptly sent to the parent or guardian of the minor advising of the contact with the minor during curfew hours and requesting cooperation in the future.

(Code 1993, § 50-75; Ord. No. 2004-02, § 1, 5-17-2004; Ord. No. 2007-05, § 1(50-75), 4-16-2007; Ord. No. 2010-04, § 1, 4-5-2010; Ord. No. 2013-02, § 2, 4-1-2013)

Sec. 30-49. Penalties.

(a) Any person who shall violate any provision of this division shall be deemed guilty of a misdemeanor. Following the issuance of a citation for a violation of the curfew hours defined in section 30-45(2), the minor shall be returned to school. Any citation issued for violation of any provision of this division shall direct the parents or legal guardians of the minor to appear together with the minor in connection with the charge of a violation.

(b) When required by V.T.C.A., Family Code § 51.08, as amended, the municipal court shall waive original jurisdiction over a minor who violates section 30-46(a) and shall refer the minor to juvenile court.

(Code 1993, § 50-76; Ord. No. 2004-02, § 1, 5-17-2004; Ord. No. 2007-05, § 1(50-76), 4-16-2007; Ord. No. 2010-04, § 1, 4-5-2010; Ord. No. 2013-02, § 2, 4-1-2013)

Secs. 30-50—30-71. Reserved.

FOOTNOTE(S):

--- (**2**) ---

State Law reference— General authority for juvenile curfew, V.T.C.A., Local Government Code § 341.905; county juvenile curfew, V.T.C.A., Local Government Code § 351.903. (Back)

DIVISION 3. USE OF TOBACCO PRODUCTS [3]

Sec. 30-72. Definitions.

Sec. 30-73. Possession of tobacco product.

Sec. 30-74. Purchase to tobacco product.

Sec. 30-72. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Minor means any person under 18 years of age.

Possesses means to have in one's actual care, custody, control or management.

Tobacco product means any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco or dipping tobacco.

(Code 1993, § 50-91; Ord. No. 96-03, § 2, 2-19-1996)

Sec. 30-73. Possession of tobacco product.

(a) It is unlawful for a minor to possess a tobacco product within the city.

(b) It is an affirmative defense to prosecution under this section that the minor's parent or legal guardian consented to possession of the tobacco product by the minor and the possession of the tobacco product was at the residence of the minor's parent or legal guardian.

(c) It is an affirmative defense to prosecution under this section that the minor possessed such tobacco product as an employee of a person holding a valid permit issued by the state authorizing such person to engage in the business of being a distributor, wholesaler, bonded agent or retailer of tobacco products and such tobacco product is possessed by the minor on the premises of the employer for the purpose of carrying out the business of such employer.

(d) It is not a violation of this section if the minor possesses the tobacco product while under the direction and supervision of a peace officer in the process of enforcing any provision of this division.

(Code 1993, § 50-92; Ord. No. 96-03, § 2, 2-19-1996)

Sec. 30-74. Purchase to tobacco product.

(a) It shall be unlawful for any minor to falsely state to any person engaged in the business of selling tobacco products within the corporate limits of the city that such minor is not a minor for the purpose of purchasing a tobacco product.

(b) It shall be unlawful for any minor to present to any person engaged in the business of selling tobacco products within the corporate limits of the city any document that purports to establish that such minor is not a minor for the purpose of purchasing a tobacco product.

(c) It is not a violation of this section if the minor acts under the direction and supervision of a police officer in the process of enforcing the laws of the state or any provision of this division.

(Code 1993, § 50-93; Ord. No. 96-03, § 2, 2-19-1996)

FOOTNOTE(S):

--- (**3**) ---

State Law reference— Distribution of tobacco products, V.T.C.A., Health and Safety Code § 161.081 et seq.; tobacco on school property, V.T.C.A., Education Code § 38.006. (Back)

Chapter 31 RESERVED

Chapter 32 PEDDLERS AND SOLICITORS [1]

ARTICLE I. - IN GENERAL

ARTICLE II. - PERMIT

FOOTNOTE(S):

--- (**1**) ---

State Law reference— Authority to regulate hawkers and peddlers, V.T.C.A., Local Government Code § 215.031; regulation of sales and solicitation, V.T.C.A., Occupations Code ch. 1801 et seq. (Back)

ARTICLE I. IN GENERAL

Sec. 32-1. Definitions.

Sec. 32-2. Exceptions to chapter.

Sec. 32-3. Refusing to leave.

Sec. 32-4. Use of public places.

Sec. 32-5. Hours of operation.

Sec. 32-6. Soliciting at intersections.

Sec. 32-7. Misrepresentation.

Sec. 32-8. Responsibility of owners, tenants and lessees allowing peddlers to utilized property.

Sec. 32-9. Compliance with the Home Solicitation Sales Act.

Sec. 32-10. Structures erected or maintained by peddlers.

Secs. 32-11—32-40. Reserved.

Sec. 32-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Peddler means any person, whether a resident of the city or not, traveling from house to house, or from street to street, for the purpose of selling or soliciting for sale, goods, wares, merchandise or services, other than agricultural products produced or processed in the state; and also means and includes any person transacting a temporary business within the city at an established place of business. The term "peddler" includes the terms "solicitor," "transient or itinerant merchant or vendor," or "transient or itinerant photographer."

(Code 1978, § 17-1; Code 1993, § 54-1)

Sec. 32-2. Exceptions to chapter.

The provisions of this chapter shall not apply to the following:

(1) Sales made to dealers or permanent merchants by commercial travelers selling in the usual course of business.

(2) Sheriffs, constables, bona fide assignees, receivers or trustees in bankruptcy or other public officers selling goods, wares and merchandise according to law.

(3) Bona fide residents of the state selling fruits, vegetables, dressed meats, fowl or farm products which were produced on land within the state, owned or controlled by such vendor.

(4) Noncommercial solicitations, sales or distributions for purposes of fundraising or generating profits by religious or charitable organizations, political organizations, conservation organizations, city civic organizations, or other educational organizations, which have their principal place of activity within the city.

(5) Minors conducting fundraising activities who represent an organization for the benefit of youths, including, but not limited to, Boy Scouts, Girl Scouts, Little League groups and city school groups.

(Code 1978, § 17-2; Code 1993, § 54-2; Ord. No. 2011-01, § 1(54-2), 3-21-2011)

Sec. 32-3. Refusing to leave.

Any peddler who enters upon premises owned, leased or rented by another and refuses to leave such premises after having been notified by the owner or occupant of such premises, or his agent, to leave the same and not return to such premises, or any peddler who enters upon property posted with a "No Peddlers Allowed," "No Solicitations Allowed," or other similar type posted sign, shall be deemed guilty of criminal trespass and/or attempted criminal trespass and may be punished as provided in V.T.C.A., Penal Code §§ 15.01, 30.05.

(Code 1978, § 17-3; Code 1993, § 54-3; Ord. No. 2011-01, §2(54-3), 3-21-2011)

Sec. 32-4. Use of public places.

It shall be unlawful for any peddler to sell or solicit or take orders for or offer to sell or take orders for or display any goods, wares, merchandise, photographs, newspapers or magazines on any public square, park, street, road, highway or alley within the city without having first obtained a special events permit as provided in section 32-55.

(Code 1978, § 17-4; Code 1993, § 54-4)

Sec. 32-5. Hours of operation.

It shall be unlawful for any peddler engaged in the business of peddling within the city to go upon any residential premises and ring the doorbell, rap or knock upon the door, or create any sound in a manner calculated to attract the attention of the occupant of the residence prior to 9:00 a.m. or after 8:00 p.m. of any day Monday through Friday, or prior to 10:00 a.m. or after 8:00 p.m. on Saturday, Sunday, or any federal, state or city holiday, except by specific appointment with or invitation from the prospective customer.

(Code 1978, § 17-6; Code 1993, § 54-6; Ord. No. 2011-01, § 3(54-6), 3-21-2011)

Sec. 32-6. Soliciting at intersections.

(a) *Prohibition.* It shall be unlawful for any person to solicit funds, advertise, or distribute any item, either on foot or in automobiles, for any cause whatsoever, at any intersection or crossing of streets within the city limits, where, in the opinion of the police chief, such solicitation or distribution would cause the blocking of traffic so as to create a traffic hazard.

(b) *Exceptions.* If, in the opinion of the police chief, it would not create a traffic hazard for solicitation of funds and advertising at an intersection of streets within the city, the person desiring to solicit funds,

advertise, or distribute any item at such intersections, shall first make an application for permission to do so by making the application at the city hall. The application shall set forth the name of the organization, the location of the intersection where such solicitation shall transpire and the length of time the proposed solicitation shall take place, not to exceed 48 consecutive hours. If the solicitation is to be done by a person under the age of 18 years, no such permit shall be issued unless such person shall have proper adult supervision as to be determined by the police chief. Any permit for the solicitation of funds shall be acquired prior to any actual solicitation, and any such permit shall be good for one such solicitation period only and any further solicitation shall require an additional permit. Such permit should be signed by the police chief.

(Code 1978, § 17-7; Code 1993, § 54-7)

Sec. 32-7. Misrepresentation.

(a) It shall be unlawful for any peddler to make false or fraudulent statements concerning the quality or nature of his goods, wares, merchandise or services for the purpose of inducing another to purchase the same.

(b) If, after a permit has been issued, the city determines that such permit was obtained by false representation in the application or the permit holder has committed any act or practice that violates V.T.C.A., Business and Commerce Code ch. 17, subch. E, otherwise known as the Texas Deceptive Trade Practices-Consumer Protection Act, or any crime or misdemeanor involving moral turpitude, or any violation of this chapter or any other city ordinance, or any other state or federal law, during the term of the permit, the permit shall be revoked by the chief of police.

(Code 1978, § 17-8; Code 1993, § 54-8; Ord. No. 2011-01, § 4(54-8(a)), 3-21-2011)

Sec. 32-8. Responsibility of owners, tenants and lessees allowing peddlers to utilized property.

Any property owner, tenant, or lessee who allows a peddler to utilize his private property shall be responsible, along with the peddler, for compliance with the adopted zoning regulations of the city set forth in chapter 48. Approval by the zoning administrator must be obtained before a permit may be issued.

(Ord. No. 2011-01, § 5(54-9), 3-21-2011)

Sec. 32-9. Compliance with the Home Solicitation Sales Act.

A peddler shall comply with the requirements of the Home Solicitation Sales Act provided for in V.T.C.A., Business and Commerce Code ch. 601. In addition to any other rights or remedies available, a consumer may cancel a consumer transaction not later than 12:00 midnight of the third business day after the date the consumer signs an agreement or offer to purchase. A peddler must provide a consumer notice and a complete cancellation form, as provided for in V.T.C.A., Business and Commerce Code §§ 601.052 and 601.053 at the time a consumer signs an agreement.

(Ord. No. 2011-01, § 6(54-10), 3-21-2011)

Sec. 32-10. Structures erected or maintained by peddlers.

It shall be unlawful for any peddler to erect or maintain any permanent or temporary structure without complying with the applicable building codes, zoning regulations, and other applicable city codes.

(Ord. No. 2011-01, § 6(54-11), 3-21-2011)

Secs. 32-11—32-40. Reserved.

ARTICLE II. PERMIT

Sec. 32-41. Required.

Sec. 32-42. Application.

Sec. 32-43. Driver's license.

Sec. 32-44. False information.

Sec. 32-45. Fingerprints, photographs.

Sec. 32-46. Bond required.

Sec. 32-47. Application and permit fee.

Sec. 32-48. Service of process.

Sec. 32-49. Approval, denial, issuance, and appeal.

Sec. 32-50. Limitation.

Sec. 32-51. Contents of permit.

Sec. 32-52. Display.

Sec. 32-53. Duration and renewal.

Sec. 32-54. Revocation.

Sec. 32-55. Special event permit.

Sec. 32-41. Required.

It shall be unlawful to engage in business as a peddler within the city without first obtaining a permit to do so unless such person is lawfully engaged in interstate commerce, in which case such peddler shall obtain a license prior to engaging in business as a peddler within the city and such license shall be obtained by registering with the city secretary and providing information under oath to the city secretary. Prior to the issuance of the license to the peddler engaged in interstate commerce, the city secretary shall obtain all of the following information and any other information deemed pertinent and necessary by the city secretary. The information to be obtained shall be as follows:

(1) Date of registration;

(2) Name of registrant;

(3) Driver's license number;

(4) Date of birth;

(5) Social security number;

(6) Home address;

(7) Local address (if any);

(8) Name of the person represented, or through which orders to be solicited are cleared;

(9) Nature of items or services to be sold or solicited;

(10) If payment or deposit will be received in advance of final delivery;

(11) If registrant has ever been convicted of a felony of any nature or any other crime of moral turpitude in this state or any other state; if so, the place, date, and crime of which convicted;

(12) Facts showing explicitly that the registrant is engaged in interstate commerce and an affidavit signed by an officer of the corporation, attesting that the registrant is a bona fide representative or employee of the corporation; and

(13) The limited sales tax permit number issued by the state comptroller of public accounts, if any.

(Code 1978, § 17-20; Code 1993, § 54-31; Ord. No. 2011-01, § 8(54-31(12), (13)), 3-21-2011)

Sec. 32-42. Application.

The application for a permit required by the provisions of this article shall state or contain the following:

(1) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any state or federal law or municipal ordinance or code; the nature of the offense; the punishment or penalty assessed therefor, if previously convicted; and the place of conviction.

(2) A written certificate of a practicing physician in the county, dated not more than five days prior to the date of filing the application, certifying that the physician has examined the applicant and has found him to be free of infectious, contagious or communicable diseases.

(3) Whether the applicant, upon any sale or order, shall demand, accept or receive payment or deposit of money in advance of final delivery.

(4) The period of time the applicant wishes to engage in business within the city.

(5) The local and permanent address of the applicant.

(6) The local and permanent address and the name of the person, if any, that the applicant represents.

(7) The kind of goods, wares, merchandise or services in which the applicant wishes to engage in such business within the city.

(8) The last five cities or towns wherein the applicant has worked before coming to the city.

(9) Such other relevant information as may be required for the investigation of the applicant.

(Code 1978, § 17-21; Code 1993, § 54-32)

Sec. 32-43. Driver's license.

At the time of filing his application for a permit or a license required by this article, the applicant shall present his driver's license, if he has one, to the city secretary.

(Code 1978, § 17-22; Code 1993, § 54-33)

Sec. 32-44. False information.

It shall be unlawful for any person to give any false or misleading information in connection with his application for a permit or a license required by this article.

(Code 1978, § 17-23; Code 1993, § 54-34)

Sec. 32-45. Fingerprints, photographs.

At the time of making application for a permit required by this article, the applicant shall submit to fingerprinting and photographing by the chief of police.

(Code 1978, § 17-24; Code 1993, § 54-35)

Sec. 32-46. Bond required.

The application for a permit required by the provisions of this article shall be accompanied by a bond in the penal sum as currently established or as hereafter adopted by resolution of the city council from time to time signed by the applicant and signed, as surety, by some surety company authorized to do business in the state, conditioned for the final delivery of goods, wares, merchandise or services in accordance with the terms of any order obtained prior to delivery and also conditioned to indemnify any and all purchasers or customers for any and all defects in material or workmanship that may exist in the article sold by the principal of such bond, at the time of delivery, and that may be discovered by such purchaser or customer within 30 days after delivery, and which bond shall be for the use and benefit of all persons that may make any purchase or give any order to the principal on such bond, or to an agent or employee of such principal.

(Code 1978, § 17-25; Code 1993, § 54-36)

Sec. 32-47. Application and permit fee.

Before an application will be considered or any permit shall be issued under the provisions of this article, the applicant shall pay a fee, based upon the duration he desires to engage in business in the city, as currently established or as hereafter adopted by resolution of the city council from time to time.

(Code 1978, § 17-26; Code 1993, § 54-37; Ord. No. 2011-01, § 9(54-37), 3-21-2011)

Sec. 32-48. Service of process.

Before any permit shall be issued under this article, there shall also be filed with the city secretary an instrument in writing, signed by the applicant under oath, nominating and appointing the city secretary his true and lawful agent, with full power and authority to acknowledge service of notice of process for and on behalf of such applicant, and service of summons in any action brought upon the applicant's bond shall be deemed made when served on the city secretary.

(Code 1978, § 17-27; Code 1993, § 54-38)

Sec. 32-49. Approval, denial, issuance, and appeal.

(a) No permit or license shall be issued under the provisions of this article until the applicant shall have complied with all the provisions and requirements of this chapter. A permit will not be issued until a background check has been completed on the individual.

(b) The chief of police shall cause such investigation of the applicant as he deems necessary for the protection of the public generally, no later than five business days after receipt of the application from the city secretary's office. If, as a result of such investigation, the applicant's character or business responsibility is found to be unsatisfactory, the chief of police shall enter the reasons for his denial on the application and return it to the city secretary. If, as a result of such investigation, the applicant's character and business responsibility are found to be satisfactory, the chief of police shall approve the application and return it to the city secretary.

(c) Any applicant denied a permit may appeal the denial by filing, within five business days of the denial, a written notice of appeal to the city manager and, if denial is upheld by the city manager, the

applicant may appeal to the city council by filing, within five business days of the denial, a written notice of appeal to the city secretary for placement on the next city council agenda. The decision of the city council shall be final.

(Code 1978, § 17-28; Code 1993, § 54-39; Ord. No. 2011-01, § 10(54-39), 3-21-2011)

Sec. 32-50. Limitation.

No peddler's permit or license shall be issued to a corporation, partnership or other impersonal legal entity, but each individual person engaging in the business of peddling within the city shall be required to have a permit or license whether acting for himself or as an agent or representative of another. Permits are not assignable and may not be transferred to another individual.

(Code 1978, § 17-29; Code 1993, § 54-40; Ord. No. 2011-01, § 11(54-40), 3-21-2011)

Sec. 32-51. Contents of permit.

Each permit or license issued under the provisions of this article shall be signed by the city secretary; shall be dated as of the date of its issuance; and shall state the duration or term of such permit or license on the face thereof. Any permit or license not dated and signed as herein provided, or which was issued in violation of this section, shall be void. A permit, when issued, must contain a photo of the individual permit holder.

(Code 1978, § 17-30; Code 1993, § 54-41; Ord. No. 2011-01, § 12(54-41), 3-21-2011)

Sec. 32-52. Display.

Every peddler having a permit or license issued under the provisions of this article and doing business within the city shall display his permit or license upon the request of any person and failure to do so shall be deemed a misdemeanor.

(Code 1978, § 17-31; Code 1993, § 54-42)

Sec. 32-53. Duration and renewal.

Every permit or license issued under the provisions of this article shall be valid for the period of time stated therein, but in no event shall any such permit or license be issued for a period of time in excess of six months. A peddler shall only be allowed one renewal of a permit in any given 12-month period from the date of issuance of the permit.

(Code 1978, § 17-32; Code 1993, § 54-43; Ord. No. 2011-01, § 13(54-43), 3-21-2011)

Sec. 32-54. Revocation.

Any permit or license issued under the provisions of this article may be revoked for the violation by the permittee or licensee of any applicable provision of this Code, state law or city ordinance. Upon such revocation, such permit or license shall immediately be surrendered to the city secretary and failure to do so shall be a misdemeanor.

(Code 1978, § 17-33; Code 1993, § 54-44)

Sec. 32-55. Special event permit.

(a) The term "special event" means an activity which makes a significant contribution to the cultural, economic, or social welfare of the city.

(b) Notwithstanding other provisions of this Code, the city secretary may issue a special event permit to enable the holder to sell or distribute services or goods on public property during special events.

(c) A special event permit shall be issued for one day only. Events lasting more than one day shall require a separate permit for each day. An applicant or his agent shall be issued no more than five special event permits during any 12-month period. The time and location for which the permit is in effect shall be transcribed on the permit.

(d) An applicant for a special event permit shall file with the city secretary a written application upon a form provided for that purpose.

(e) An applicant for, or the holder of, a special event permit shall pay as a fee for the permit, which fee shall be used as rental for the use of public property, the sum as currently established or as hereafter adopted by resolution of the city council from time to time.

(f) After inspection or investigation, the city secretary shall approve or deny an application for a special event permit. If such application is approved, the city secretary shall issue a special event permit which shall state on its face the name of the person to whom it is granted and the expiration date. The city secretary shall designate on such permit the location in which the special event permit holder is allowed to do business.

(g) The holder of a special event permit who fails to comply with the ordinances of the city or who violates any applicable laws, ordinances, or regulations of the city shall have the special event permit immediately revoked and such holder shall immediately return such special event permit to the city secretary.

(h) Except for the permitting requirements, the applicant for a special event permit and/or the holder of a special event permit shall comply with all of the sections of this chapter.

(Code 1978, § 17-34; Code 1993, § 54-45)

Chapter 33 RESERVED

Chapter 34 SIGNS

ARTICLE I. - IN GENERAL

ARTICLE II. - DESIGN AND STRUCTURAL REQUIREMENTS

ARTICLE I. IN GENERAL

Sec. 34-1. Definitions.

Sec. 34-2. Scope; conflicts.

Sec. 34-3. Classifications.

Sec. 34-4. Sign administrator and enforcement.

Sec. 34-5. Sign permits and fees.

Sec. 34-6. Sign maintenance and removal.

Sec. 34-7. Miscellaneous sign provisions.

Sec. 34-8. On-premises sign provisions.

Sec. 34-9. Off-premises sign provisions.

Sec. 34-10. Nonconforming signs.

Sec. 34-11. Changeable electronic variable message signs.

Sec. 34-12. Attention-getting devices.

Sec. 34-13. Billboards.

Sec. 34-14. Prohibited signage.

Secs. 34-15—34-40. Reserved.

Sec. 34-1. Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Advertising means to seek the attraction of or to direct the attention of the public to any goods, services, or merchandise whatsoever.

Aircraft means a vehicle capable of atmospheric flight due to interaction with the air, such as buoyancy or lift.

Awning sign means any sign constructed of a plastic, fabric-type, or other material stretched over a rigid metal frame that is permanently attached to the wall, roof, or mansard of a building.

Bandit sign means a sign having less than ten square feet of advertising area.

Banner sign means any sign constructed of cloth, canvas, light fabric or other flexible material, excluding awning signs, which is not rigidly and not permanently attached to a building or the ground through a semi-permanent or permanent support structure.

Billboard means a signage panel for the display of advertisements in public places, such as alongside highways.

Business purposes means the erection or use of any property, building or structure, permanent or temporary, for the primary purpose of conducting in the building or structure or on the property a legitimate commercial enterprise in compliance with all ordinances and regulations of the city governing such activity; the term "business purposes" shall not include any property, building, or structure erected or used for the primary purpose of securing a permit to erect a sign.

Changeable electronic variable message signs (CEVMS) means a sign which permits lights to be turned on or off intermittently or which is operated in a way whereby light is turned on or off intermittently, including any illuminated sign on which such illumination is not kept stationary or constant in intensity and color at all times when such sign is in use, including an light emitting diode (LED) or digital sign, and which varies in color or intensity. The term "CEVMS signs" does not include a sign located within the right-of-way which functions as a traffic control device and which is described and identified in the Manual on Uniform Traffic Control Devices (MUCTD) approved by the federal highway administrator as the national standard.

Commercial or industrial activity means property that is devoted to use for business purposes and not for residential purposes. The term "commercial or industrial activity" shall not include the following:

(1) Signs;

(2) Agricultural, forestry, ranching, grazing, farming, and related activities;

(3) Activities not housed in a permanent building or structure;

(4) Activities conducted in a building primarily used as a residence.

Curbline means an imaginary line drawn along the edge of the pavement on either side of a public street.

Display surface means the entire surface of a sign, on one side, devoted to exhibiting or contrasting exhibits of advertising. The term "display surface" generally includes the entire sign surface except for the sign frame and incidental supports thereto.

Early voting period is as defined in the V.T.C.A., Election Code § 85.001.

Electioneering is as defined in the V.T.C.A., Election Code § 85.036.

Electrical sign means any sign containing electrical wiring or utilizing electric current, but not including signs illuminated by an exterior light source.

Flag sign means any device generally made of flexible material, such as cloth, paper, plastic, or other material, and displayed from a pole, cable, or rope. It may or may not include text.

Ground sign means a sign which is supported by uprights or braces in or upon the ground.

Inflatable sign means a sign that gains its shape from inserting air or other gas.

Integrated business development means a planned development, comprised of two or more separate commercial entities, whether located on a single lot, tract, or parcel of land or not, which provides common off-street parking, pedestrian ways, landscaping, and/or other areas designed, constructed, and maintained for the common use and benefit of the development's tenants or occupants, and the customers thereof.

Living or human sign means a sign held by or attached to a human being or living creature for the purpose of advertising or otherwise drawing attention to an individual, business, commodity, service, or product. This can also include a person dressed in costume for the purpose of advertising or drawing attention to an individual, business, commodity, service, or product.

Marquee sign means a type of projecting sign attached to or hung from a canopy or covered structure projecting from and supported by a frame or pipe support extending beyond the facade of a building, by no more than 18 inches, but not above its roofline.

Message board sign means any sign or portion of a sign attached to a structure which contains a sign face designed to allow the removal or replacement of individual letters, words, or symbols on the sign face for the purpose of changing an advertising message.

Monument sign means a permanent, freestanding sign mounted on a structural base and where the bottom of the sign base is located within two feet of ground level.

Off-premises sign means any sign advertising a business, person, activity, goods, products, or services not usually located on the premises where the sign is installed and maintained, or which directs persons to any location not on the premises.

On-premises sign means any sign identifying or advertising the business, person, activity, goods, products, or services primarily sold or offered for sale on the premises where the sign is installed and maintained when such premises are used for business purposes.

Person means an individual, company, corporation, partnership, association, or any other entity.

Pole sign means a permanent, freestanding sign that is mounted on a pole or other support that is placed on and anchored in the ground or on a base and that is independent from any building or other structure.

Portable sign means any sign designed or constructed to be easily moved from one location to another, including signs mounted upon or designed to be mounted upon a trailer, bench, wheeled carrier, or other nonmotorized mobile structure; a portable sign which has its wheels removed shall still be considered a portable sign.

Premises means a lot tract or parcel of land including all buildings and structures.

Prohibited area means the area within which V.T.C.A., Election Code § 85.036(a) prohibits electioneering during the time an early voting or voting place is open for the conduct of early voting or voting.

Projecting sign means any sign which is affixed to any building wall or structure and extends beyond the building wall or structure more than 12 inches.

Public property means property owned or controlled by a public entity.

Public right-of-way means any part of a right-of-way not privately owned or controlled, and which is the responsibility of the city of other similar public agency to maintain.

Public street means the entire width between property lines of any road, street, way, alley, bridge, or other similar thoroughfare, not privately owned or controlled, when any part thereof is open to the public for vehicular traffic, is the responsibility of the city or other similar public agency to maintain, and over which the city has legislative jurisdiction under its police power.

Reflectorized lights means any lamp constructed with reflector-type materials so as to focus, intensify, flood, or spot such lamp in a certain direction, including, but not limited to, lamps designated by the manufacturers as flood, spot, reflector or flood, reflector spot, reflector light, or clear reflector.

Residential purposes means property devoted to use as a single-family or multifamily residence. The term "residential purposes" shall include, but not be limited to, property used for houses, duplexes, condominiums, townhomes, patio homes, and apartments; property used for hotels, motels, and boardinghouses shall not be considered as used for residential purposes. Property devoted to both residential and nonresidential use shall be considered as used for residential purposes if its principal use is residential.

Roof sign means any sign erected, constructed, or maintained above the roof of any building.

Sign means any outdoor display, design, pictorial, or other representation, which is constructed, placed, attached, painted, erected, fastened, or manufactured in any manner whatsoever, that is designed, intended, or used for advertising. The term "sign" includes the sign structure. Every sign shall be classified and conform to the requirements of each of such classification set forth in this chapter.

Sign facing or *facing* means a separate and distinguishable portion of the overall display surface.

Sign structure means any structure which supports or is capable of supporting any sign. The term "sign structure" may be a single pole and may or may not be an integral part of a building.

Temporary sign means a sign shall not be permitted for length of time longer than 14 consecutive calendar days.

Wall sign means any sign affixed to or painted upon the wall of any building.

Wayfinding sign means a systematic network of directional on- and off-premises. signage installed and maintained by a public or private entity to guide vehicular or pedestrian movement to/through a residential subdivision or nonresidential development.

Window sign means any sign painted or adhered on a glass surfaces of windows or doors.

(Code 1993, § 60-1; Ord. No. 2002-12, § 2, 5-6-2002; Ord. No. 2008-07, § 2, 5-19-2008; Ord. No. 2012-22, § 1(60-1), 11-5-2012; Ord. No. 2013-24, § 2(60-1), 1-6-2014)

Sec. 34-2. Scope; conflicts.

(a) In accordance with the provisions of the Local Government Code, the provisions of this chapter shall apply to all signs, as that term is defined herein, within the city and shall also extend to and be enforced within the extraterritorial jurisdiction of the city.

(b) Where this chapter shall differ or conflict with chapter 10, article II, adopting the International Building Code, or any other ordinance, this chapter will prevail.

(Code 1993, § 60-2; Ord. No. 2002-12, § 2, 5-6-2002)

Sec. 34-3. Classifications.

(a) For the purpose of this chapter, a sign shall be first classified as either an on-premises sign or an off-premises sign.

(b) All signs shall further be classified into one of the following type signs:

(1) Ground sign;

(2) Marquee sign;

(3) Projecting sign;

(4) Roof sign;

(5) Wall sign; or

(6) Window sign.

(c) Any on-premises or off-premises sign of any type may also be included within one or more of the following additional classifications according to special functions:

(1) Electrical sign;

(2) Portable sign; or

(3) Temporary sign.

(Code 1993, § 60-3; Ord. No. 2002-12, § 2, 5-6-2002; Ord. No. 2012-22, § 3(60-3), 11-5-2012)

Sec. 34-4. Sign administrator and enforcement.

(a) *Sign administrator.* The city manager or his designee shall appoint a sign administrator. The sign administrator is empowered to delegate the duties and powers granted to and imposed upon him by this chapter to other persons serving under the sign administrator. The sign administrator is directed to enforce and carry out all provisions of this chapter.

(b) *Enforcement responsibility.* The duties of the sign administrator shall include not only the approval of permits as required by this chapter, but also the responsibility of ensuring that all signs comply with this chapter and any other applicable law, and that all signs for which a permit is required do, in fact, have a permit. The sign administrator shall make such inspections as may be necessary and initiate appropriate action to bring about compliance with this chapter and other applicable law if such inspection discloses an instance of noncompliance. The sign administrator shall investigate thoroughly any complaints of alleged violations of this chapter.

(c) *Powers of sign administrator.* The sign administrator shall have the power and authority to administer and enforce the conditions of this chapter and all other laws relating to signs. Included among such powers are the following specific powers:

(1) Every sign for which a permit is required shall be subject to the inspection and approval of the sign administrator or a delegated representative.

(2) Upon presentation of proper identification to the owner, agent, or tenant in charge of such property, the sign administrator or his representative may enter, for the purposes of inspecting and investigating signs or sign structures, any building, structure, or other premises or property between the hours of 8:00 a.m. and 5:00 p.m., Mondays through Saturdays; provided, however, that in cases of an emergency where extreme hazards are known to exist which may involve imminent injury to persons, loss of life, or severe property damage, and where the owner, agent, or tenant in charge of the property is not available after the sign administrator has made a good faith effort to locate same, the sign administrator may enter the aforementioned structures and premises at any time upon presentation of proper identification to any other person upon the premises. Whenever the sign administrator is denied admission to inspect any premises, inspection shall be made only under authority of a warrant issued by a magistrate authorizing the inspection for violations of this chapter.

(3) Upon notice and issuance of a stop order from the sign administrator, work on any sign that is being conducted in a manner contrary to the provisions of this chapter or is being conducted in a dangerous or unsafe manner shall be immediately stopped. Such notice and order shall be in writing and shall be given to the owner of the property, to his agent, or to the person doing the

work, and shall state the conditions under which work may be resumed. Where an emergency exists, written notice shall not be required to be given by the sign administrator. Following the issuance of a stop order, the sign administrator shall initiate proceedings to revoke any permit issued for the work covered by such stop order, consistent with subsection (c)(4) of this section, unless the cause of the stop order is resolved to the sign administrator's satisfaction.

(4) The sign administrator is hereby granted the power and authority to revoke any and all permits authorized by this chapter for violation of the terms and provisions of this chapter.

(d) *Appeals.* Any person wishing to appeal a decision of the sign administrator on the grounds that the decision misconstrues or wrongly interprets this chapter may appeal the same to the city council, pursuant to its rules and regulations, provided that the appealing party shall give notice of appeal in writing to the city secretary no less than ten days following the decision appealed from, and provided, further, that the appealing party shall comply with the sign administrator's decision pending appeal unless the sign administrator shall direct otherwise.

(Code 1993, § 60-4; Ord. No. 2002-12, § 2, 5-6-2002)

Sec. 34-5. Sign permits and fees.

(a) *Permit required.* No person shall erect, construct, or reconstruct a sign without first having secured a written permit from the city to do so, subject to the exceptions in subsection (b) of this section.

(b) *Exceptions.*

(1) *Governmental/public signs.* No permit shall be required under this chapter for signs erected by the city, county, public school district, the state, or other political subdivisions thereof, the federal government, signs otherwise required by federal, state, or local laws, and signs otherwise authorized by the city as public signs.

(2) *Signs for civic events.* Temporary signs that provide information about and/or direct the public to a special event of civic interest, including, but not limited to, parades, organized community holiday festivities or celebrations, and special events organized by charitable or nonprofit organizations.

(3) *Other signs.* On-premises signs of the following descriptions; any sign listed hereunder shall be erected and maintained in a safe condition in conformity with section 34-7, all other city ordinances and building codes of the city:

a. Signs painted or adhered on glass surfaces, windows, or doors;

b. Railroad signs;

c. Legal notices and address numbers;

d. A sign not over 32 square feet in area setting forth information concerning a building or other structure under repair or construction or advertising the sale or rental of the premises so long as the building or other structure is under repair or construction or so long as the premises is for sale or rent;

e. Temporary signs setting forth the location of or directions to parking or buildings located on the premises, or regulating of the flow of on-premises traffic. Such directional signs may be lighted, consistent with the other requirements for electrical signs in this chapter and with the requirements of the building code;

f. Signs displayed, designed, or used for or upon motor vehicles;

g. Signs designed and used for display upon or with lighter-than-air or heavier-than-air craft; and

h. Garage sale signs. Such signs shall not be displayed for more than three consecutive days for each sale and shall not be placed in rights-of-way or on telephone/power/light poles. The date of the initial posting shall be displayed on all garage sale signs.

(4) *Political signs.* Signs permitted under section 34-7(c)(4) are not prohibited by this section.

(c) *Application procedure.*

(1) The application for a permit shall be submitted in such form as the sign administrator may prescribe and shall be accompanied by drawings and descriptive data to verify compliance with the provisions of this chapter. Construction permit applications for new ground signs when erected or constructed to heights exceeding six feet above ground level, or for new roof, marquee, and projecting signs when erected 20 feet above ground level, shall be accompanied by a drawing of the sign structure and the sign prepared by and certified by a professional engineer registered in the state; the sign administrator at his option may also require similar certification by a registered professional engineer where any unusual structural provisions of a proposed sign indicate such certification is necessary in the interest of public safety.

(2) Every application shall be executed by both the owner of the premises upon which the sign is to be constructed, or the authorized lessee of such premises, and the sign company, stating that the sign is authorized to be erected or to be thereafter maintained on the premises, and shall contain a statement of the owner or lessee and the sign company that the sign does not violate any applicable deed restrictions or other similar restrictions on the premises.

(3) If the location, plans, and specifications set forth in any application for permit conform to all of the requirements of this chapter and other applicable provisions of the building code and other codes, the sign administrator shall issue the permit.

(d) *Existing signs.* All signs lawfully existing on the date of adoption of the ordinance from which this chapter is derived, must conform to the requirements of sections 34-6 and 34-7. Signs previously erected or in the process of being erected, and lawfully permitted in the city's extraterritorial jurisdiction shall be considered as existing signs under this subsection (d); provided, however, that the date of the first publication of notice for a public hearing (as required by the Local Government Code) regarding the proposed annexation of an area, shall, for the purposes of this chapter, be considered the date to determine the applicability of this chapter to any sign within the extraterritorial jurisdiction, as extended by such annexation. Any sign within such area required by any proper authority to be licensed or permitted shall not be considered to have been legally permitted for the purposes of this subsection (d) unless such license or permit has been properly issued.

(e) *Construction permit effectiveness; renewal permit.* Any permit for construction of a sign shall become null and void unless construction of the sign is completed within 180 days, or the permit is renewed for an additional 180 days in which case an additional fee shall be payable and the proposed sign shall meet all of the requirements of this chapter on the date of renewal.

(f) *Fees.* Permit fees shall be in accordance with the schedule of fees as currently established or as hereafter adopted by resolution of the city council from time to time.

(g) *No refund of fees.* The applicant for a permit or holder of a permit shall not be entitled to a refund of any fee paid in case the permit is revoked.

(h) *Electrical signs.* Any electrical sign shall conform fully to the electrical code of the city and shall receive a permit under the provisions of that code.

(Code 1993, § 60-5; Ord. No. 2002-12, § 2, 5-6-2002; Ord. No. 2012-22, §§ 4(60-5(b)), 5(60-5)(c)), 11-5-2012; Ord. No. 2013-24, § 2(60-5), 1-6-2014)

Sec. 34-6. Sign maintenance and removal.

(a) All signs shall be kept in good repair and, unless of galvanized or noncorroding metal or treated with appropriate wood preservative, shall be thoroughly painted as often as is necessary consistent with

good maintenance. All braces, bolts, clips, supporting frame, and fastenings shall be free from deterioration, termite infestation, rot, or loosening. All signs shall be able to withstand safely at all times the wind pressures in this chapter. In case any sign is not so maintained, the sign administrator shall give written notice to the owner or lessee thereof to so maintain the sign, or to remove the sign.

(b) Should any sign in the opinion of the sign administrator become insecure or in danger of falling or otherwise unsafe, the sign administrator shall give written notice of the condition of the sign to the person owning, leasing, or responsible for the sign. Such person so notified shall correct the unsafe condition of the sign in a manner to be approved by the sign administrator in conformity with the provisions of this chapter.

(c) In case any sign shall be installed, erected, constructed, or maintained in violation of any of the terms of this chapter, the sign administrator shall give written notice to the owner, lessee, or person responsible for the sign ordering such owner, lessee, or person to alter the sign so as to comply with this chapter or to remove the sign.

(d) Any written notice to alter or to remove a sign shall be given by the sign administrator by certified mail or written notice served personally upon the owner, lessee, or person responsible for the sign, or the owner's agent. If such order is not complied with within ten days, the sign administrator shall revoke the permit and direct the owner, lessee, or person responsible therefor to remove the sign.

(Code 1993, § 60-6; Ord. No. 2002-12, § 2, 5-6-2002)

Sec. 34-7. Miscellaneous sign provisions.

(a) *Banner signs.* A property shall be limited to one on-premises or one off-premises banner signs. All banners signs shall be considered temporary in nature, as defined in this chapter. Excluding signs as specified under section 34-5(b)(2) and (b)(3)d.

(b) *Political signs.* A sign that contains primarily a political message and that is located on private real property with the consent of the property owner is exempt from the permit requirements of this chapter. Private real property does not include real property subject to an easement or other encumbrance that allows a municipality to use the property for a public purpose; provided, however, the sign may not have a sign area greater than 36 square feet, be more than eight feet high, be illuminated or have a moving part. This subsection does not apply to a sign, including a billboard, that contains primarily a political message on a temporary basis and that is generally available for rent or purchase to carry commercial advertising or other messages that are not primarily political.

(c) *Signs on public rights-of-way.*

(1) With the exception of signs lawfully permitted or erected prior to the effective date of the ordinance from which this chapter is derived, it shall be unlawful to place a sign upon a public street, public sidewalk, public alley, public right-of-way, public curb, or other public improvement in any public street or grounds, on any public bridge or part of same, or on any public building or structure of any kind belonging to the city, or in any public place, or on any public improvement unless express consent therefor shall have first been granted by the city council. However, coin-operated devices used to display and vend newspapers may so be placed, so long as they are not placed to impede vehicular or pedestrian traffic. This subsection does not apply to public property leased for private business purposes.

(2) Subdivision identification signs erected or painted directly upon the face of lawfully existing fences or walls are permitted, provided that:

a. The subdivision sign is facing a street which serves as an entrance to the subdivision to which such sign pertains;

b. The subdivision sign, or any part thereof, does not extend outward more than six inches from the face of the fence or wall upon which it is mounted; and

c. The subdivision sign, or any part thereof, does not extend above the fence or wall upon which it is mounted.

(3) Any unlawful sign found on public property, buildings, or structures belonging to the city or within a public right-of-way of a public street, public sidewalk, or public alley shall be seized and removal thereof is hereby authorized in addition to authority under chapter 20, article II. The sign administrator, employees of the police department and the department of public works are hereby authorized to impound any signs found on public property, buildings or structures, or a public street, public sidewalk, or public alley and transport or cause the same to be transported to a location to be designated by the sign administrator for storage. Any sign impounded and stored and not redeemed by the owner thereof within 30 days may be destroyed or sold at public auction in the same manner as surplus property of the city.

(4) During the early voting period through the end of the following election day, a maximum of two temporary political signs for each candidate, measure, or political party may be placed within the designated electioneering area of the early voting or voting polling place building's premises, which is also outside the prohibited area. The designated electioneering area is the portion of the grassy strip north of the Public Works Building, 501-B James Street, located outside the 100-foot prohibited area, and the area in Heritage Plaza, 400 Market Street, outside the designated 100-foot prohibited area. Such two signs shall each have a maximum area of four square feet but may contain the same message on both sides. Such signs must be placed in the designated electioneering area in a manner so as not to block or obscure other political signs. Such signs shall only be allowed from 7:00 a.m. on the beginning of the early voting period until 7:00 p.m. on election day, at which time the signs shall be removed by the person or organization placing them.

a. Any unauthorized persons removing political signs otherwise permitted by this section shall be guilty of a misdemeanor and subject to a fine as provided in section 1-14

b. Failure to remove permitted signs in accordance with the section is a violation of this chapter subject to a fine as provided in this Code.

c. On election day only, each candidate may erect a single tent, canopy, or similar item encumbering or encroaching on public property in Heritage Plaza, 400 Market Street, in the designated location, located outside the 100-foot prohibited area, as decided during the drawing for location in Heritage Plaza conducted prior to the beginning of early voting.

d. Any signs on public property not permitted may be removed by the city. Any political signs installed prior to the authorized time, placed in a location other than the designated location delineated, or not removed within the time prescribed herein, may be removed by city personnel and discarded or destroyed.

e. The provisions of this subsection shall not apply to notices posted by order of the court or notices to the public as required by law to be posted in a public place.

(Code 1993, § 60-7; Ord. No. 2002-12, § 2, 5-6-2002; Ord. No. 2010-03, § 1, 3-1-2010; Ord. No. 2012-22, § 6(60-7), 11-5-2012; Ord. No. 2013-24, § 2(60-7), 1-6-2014)

Sec. 34-8. On-premises sign provisions.

(a) The provisions of this section apply only to on-premises signs.

(b) On-premises signs, including ground signs, wall signs, marquee signs, projecting signs, window signs and roof signs, erected, constructed, or reconstructed after the date of adoption of the ordinance from which this chapter is derived shall comply with the requirements of this chapter.

(c) On-premises ground signs shall be permitted as follows:

(1) One on-premises ground sign shall be permitted on a lot, tract, or parcel of land for each 100 feet of frontage on a public street, provided that there is a minimum separation of 100 feet

between ground signs (on-premises and off-premises) located on the same lot, tract, or parcel of land, measured in a straight line from the base of each sign structure. Each lot, tract, or parcel of land shall, in any event, be entitled to at least one on-premises ground sign.

(2) A lot, tract, or parcel of land having frontage on more than one public street shall be entitled to one on-premises ground sign on each frontage, notwithstanding the provisions of subsection (c)(1) of this section, provided the frontage on which the sign is located measures at least 50 feet and there is a minimum separation between ground signs (on-premises and off-premises) of 100 feet, measured along the property line at the street frontage.

(3) An integrated business development shall be permitted one on-premises ground sign for each five entities, with a maximum sign area of 300 square feet plus 50 square feet for each entity in the development identified on such sign in excess of five. Provided, further, if more than one on-premises ground sign is permitted hereby, there shall be separation between ground signs (on-premises and off-premises) of a minimum distance of 100 feet, measured in a straight line from the base of each sign structure.

(d) On-premises signs shall comply with the visibility triangle requirements of chapter 38

(Code 1993, § 60-8; Ord. No. 2002-12, § 2, 5-6-2002; Ord. No. 2006-18, § 1, 11-20-2006; Ord. No. 2012-22, § 7(60-8), 11-5-2012)

Sec. 34-9. Off-premises sign provisions.

(a) The provisions of this section shall apply only to off-premises signs.

(b) No new permits shall be issued for off-premises signs and no additional off-premises signs shall be erected except as authorized by this section. Off-premises ground signs shall be permitted upon compliance with the following standards:

(1) Maximum sign height shall be 12 feet measured from the highest point on the sign to the natural grade level of the ground surface in which the sign supports are placed.

(2) Maximum sign face area shall be 40 square feet.

(3) There shall be a minimum separation of 500 feet between the off-premises ground sign and any other off-premises sign, and a minimum separation of 100 feet between the off-premises sign and any on-premises ground sign. Such distance shall be measured by the shortest distance in a straight line between the two signs.

(4) There shall not be more than two off-premises signs per property.

(5) No off-premises ground sign shall be permitted within 350 feet of an intersection of public streets.

(6) Signs permitted under this section shall otherwise comply with all applicable requirements of this chapter.

(c) Any off-premises sign structure lawfully erected and maintained, which has no copy, transcript, model, likeness, image, advertisement, or written material for 120 consecutive days, is hereby declared to be in violation of this section and, as such, shall be restored to use or removed by the owner or permittee within 30 days after notice by the sign administrator of such violation.

(Code 1993, § 60-9; Ord. No. 2002-12, § 2, 5-6-2002; Ord. No. 2006-18, § 2, 11-20-2006; Ord. No. 2012-07, § 2, 5-7-2012; Ord. No. 2012-22, § 8(60-9), 11-5-2012)

Sec. 34-10. Nonconforming signs.

A permanent sign lawfully erected within the city or its extraterritorial jurisdiction prior to the date of adoption of the ordinance from which this chapter is derived, which does not conform to the regulations of this chapter, shall be deemed to be a nonconforming sign which shall be allowed to continue, with normal

maintenance and repair only; provided, however, a nonconforming sign may not be enlarged upon, expanded, or extended. The addition of an LED clock or time counter for informational purposes to off-premises signs shall not constitute an enlargement, expansion, or extension insofar as it is placed within the original face of the nonconforming sign and is not more than ten percent of the total sign area. It is not the intent of this section to encourage the survival of nonconforming signs; to the contrary, nonconforming signs are discouraged and contrary to the intent and purpose of this chapter.

(1) *Obsolescence or destruction.* A nonconforming sign shall not be enlarged, expanded, replaced, or rebuilt in case of obsolescence or total destruction by any means or cause.

(2) *Repair or reconstruction if damaged.* In the event a nonconforming sign is damaged by any means or cause and the repair or reconstruction cost, whichever is applicable, equals or exceeds 50 percent of the cost of erecting a new sign of the same type at the same location, it must be removed or brought into compliance with this chapter.

(Code 1993, § 60-10; Ord. No. 2002-12, § 2, 5-6-2002)

Sec. 34-11. Changeable electronic variable message signs.

(a) Changeable electronic variable message signs (CEVMS) shall be prohibited within the corporate limits and the extraterritorial jurisdiction of the city, except that changeable electronic variable message signs shall permitted for properties adjacent to all state rights-of-ways and for public tax-supported schools to provide public information. Changeable electronic variable message signs may be permitted on properties not adjacent to a state right-of-way upon application to and approval by the city council. No new permit shall be issued for the installation, erection, or replacement of a CEVMS, including any conversion or modification of an existing sign to a CEVMS, within the corporate limits or the extraterritorial jurisdiction of the city, except as provided herein.

(b) CEVMS regulations.

(1) Images or messages shall be static in nature and shall not blink, flash, scroll or be animated in such a manner as to constitute a distraction to passing motorists.

(2) No image or message may be displayed for less than eight seconds.

(3) Message transitions shall be limited to one second.

(4) The brightness of any CEVMS shall not exceed 0.3 foot-candle illumination from a distance of 250 feet between sunset and sunrise, and each sign shall be fitted with a qualified light-sensing device to automatically adjust the brightness in accordance with these standards.

(5) All CEVMSs shall be limited to 32 square feet for a single business or use and 50 square feet for a multitenant business or use.

(6) All CEVMSs shall require a usage permit with annual fee. The annual fee shall be established by resolution of the city council

(7) If a CEVMS is found to be operating incorrectly, it must be turned off until it is repaired and inspected by the city.

(8) The images displayed on the CEVMS must be directly related to the on-premises business, with the exception of messages relating to time, temperature, national news, local news, sporting events, or upcoming events for the city.

(c) CEVMS shall only be permitted as on-premises signs.

(d) The addition of an LED clock or time counter for informational purposes to off-premises signs shall be allowed. The LED clock or time counter shall not constitute more than ten percent of the total sign area.

(Ord. No. 2008-07, § 3, 5-19-2008; Ord. No. 2011-14, § 2, 7-26-2011)

Sec. 34-12. Attention-getting devices.

(a) As used in this section, attention-getting devices shall mean devices erected, placed or maintained outdoors so as to attract attention to any commercial business, or any goods, products or services available on the premises of a commercial business, including but not limited to the following devices: cutout figures; discs; festooning, including tinsel, strings of ribbons, and pinwheels; inflatable objects, including balloons; nongovernmental flags; pennants; propellers; steam- or smoke-producing devices; streamers; whirligigs; wind devices; blinking, rotating, moving, chasing, flashing, glaring, strobe, scintillating, search, flood or spot lights; or similar devices, any of which are located or employed in connection with the conduct of a commercial business. Attention-getting devices shall not include any structure or device that is permitted under the city building code.

(b) It shall be unlawful for any person to place, erect, maintain, or display any attention-getting device on any private or public property within the city. No attention-getting device shall be eligible for a permit under this chapter.

(c) Enforcement of this section shall be the duty of the sign administrator.

(Ord. No. 2012-22, § 9(60-12), 11-5-2012)

Sec. 34-13. Billboards.

(a) No new billboards shall be permitted within the city limits or the extraterritorial jurisdiction of the city.

(b) Existing billboards.

(1) Sign face replacement shall be allowed without a permit to the extent that no structural modifications are required.

(2) In the event a billboard is damaged by any means or cause and the repair or reconstruction cost, whichever is applicable, equals or exceeds 50 percent of the cost of erecting a new sign of the same type at the same location, it must be removed.

(b) Any billboard lawfully erected and maintained that has no copy, transcript, reproduction, model, likeness, image, advertisement or written material for a period of 120 consecutive days is hereby declared to be a violation of this section and as such shall be restored to use or removed by the owner or permittee within 30 days after notice by the sign administrator of such violation.

(Ord. No. 2012-22, § 10(60-13), 11-5-2012)

Sec. 34-14. Prohibited signage.

All signage listed in this section shall be prohibited within the city limits and its extraterritorial jurisdiction. All existing prohibited signage shall be removed within 120 calendar days from the effective date of the ordinance from which this chapter is derived.

(1) Inflatable signs.

(2) Human or living signs.

(3) Freestanding temporary signage for non-civic events, except as otherwise exempted by this chapter.

(4) Attention-getting devices.

(5) Bandit signs.

(6) Obscene signs.

(7) Portable signs.

(8) Any sign not specifically mentioned in this chapter is prohibited unless approved by city council.

(Ord. No. 2012-22, § 11(60-14), 11-5-2012)

Secs. 34-15—34-40. Reserved.

ARTICLE II. DESIGN AND STRUCTURAL REQUIREMENTS

Sec. 34-41. Design.
Sec. 34-42. Construction.
Sec. 34-43. Electrical requirements.
Sec. 34-44. Height limitations.
Sec. 34-45. Size limitation.
Sec. 34-46. Method of determining area of sign.
Sec. 34-47. Clearances.
Sec. 34-48. Wayfinding signs.
Sec. 34-49. Flags and flag signs.

Sec. 34-41. Design.

All signs and sign structures shall be designed and constructed to resist wind forces as follows:

Wind Load Pressures in Pounds per Square Foot for All Signs

Height above ground* (feet)	Pressure (pounds/feet)
0—5	0
6—30	20
31—50	25
51—99	35

*Measured above the average level of the ground adjacent to the structure.

(Code 1993, § 60-26; Ord. No. 2002-12, § 2, 5-6-2002)

Sec. 34-42. Construction.

The supports for all signs or sign structures shall be placed in or upon private property and shall be securely built, constructed, and erected in conformance with the requirements of the city building code.

(Code 1993, § 60-27; Ord. No. 2002-12, § 2, 5-6-2002)

Sec. 34-43. Electrical requirements.

All electrical fixtures, equipment, and appurtenances installed in conjunction with a sign shall be designed and installed in accordance with the city building code.

(Code 1993, § 60-28; Ord. No. 2002-12, § 2, 5-6-2002)

Sec. 34-44. Height limitations.

(a) No on-premises ground sign shall be established, constructed, or erected which exceeds an overall height of 42 feet including cutouts extending above the rectangular border, measured from the highest point on the sign to the natural grade level of the ground surface in which the sign supports are placed.

(b) Roof, wall, projecting and marquee signs shall not at any point exceed eight feet above the roof level.

(c) No off-premises sign shall be established, constructed, or erected which exceeds an overall height of 12 feet measured from the highest point on the sign to the natural grade level of the ground surface.

(Code 1993, § 60-30; Ord. No. 2002-12, § 2, 5-6-2002; Ord. No. 2012-22, § 12(60-29), 11-5-2012)

Sec. 34-45. Size limitation.

(a) No on-premises wall sign shall be established which has a face area exceeding 300 square feet per building face.

(b) No CEVMS shall be established which has a face area exceeding 32 square feet for a single-business or use and 50 square feet for a multitenant business or use.

(c) All on-premises window signs shall maintain, at minimum. 50 percent transparency overall, unless otherwise noted in this chapter.

(d) No off-premises sign shall be established, constructed, or erected which has a face area exceeding 40 square feet, including cutouts, but excluding uprights.

(Code 1993, § 60-30; Ord. No. 2002-12, § 2, 5-6-2002; Ord. No. 2012-22, § 13(60-30), 11-5-2012)

Sec. 34-46. Method of determining area of sign.

In determining the area of any sign, the dimensions of the rectangle enclosing the signboard, excluding the supporting structure, shall be used. If the sign includes cutouts or facings extending beyond the dimensions of the rectangular signboard, the measurement of the sign area shall include the actual area of the cutout or extended facings. For signs of a double-faced, back-to-back, or V-type nature, each face shall be considered a separate sign in computing the face area.

(Code 1993, § 60-31; Ord. No. 2002-12, § 2, 5-6-2002)

Sec. 34-47. Clearances.

Signs shall be located at a minimum distance of six feet measured horizontally and 12 feet measured vertically from overhead electric conductors which are energized in excess of 750 volts.

(Code 1993, § 60-32; Ord. No. 2002-12, § 2, 5-6-2002)

Sec. 34-48. Wayfinding signs.

(a) On-premises wayfinding signs shall have a maximum sign face area of 12 square feet.

(b) Off-premises wayfinding signs shall have a maximum sign face area of 40 square feet.

(c) Wayfinding signage shall include only arrows, directions, and references to specific destinations or geographical areas.

(d) A wayfinding guide sign plan shall be submitted to the sign administrator at the time of permitting. The plan shall include:

(1) Sign detail with dimensions, colors and font size for each sign.

(2) Mounting height, type and location of mount.

(3) Distance to any existing adjacent traffic control devices, driveways or other physical roadway features.

(Ord. No. 2012-22, §§ 14(60-33), 15(60-33), 11-5-2012)

Sec. 34-49. Flags and flag signs.

(a) No more than three freestanding flagpoles may be allowed at any time on the premises, as defined and determined by the city. Federal, state, or local government flags, emblems and/or historical markers and any flags or insignia of a religious, charitable, fraternal, academic, or civic organization may be allowed.

(b) A maximum of one corporate flag and flagpole may be permitted if erected in conjunction with at least one flagpole and flag consistent with subsection (a) of this section.

(c) Official flags shall be flown in a manner that meets U.S. Congressional protocol. Failure to display flags in this manner shall be a violation of this section. All flags shall be kept in good repair.

(d) Flags may be permitted in all zoning districts.

(e) Design and lighting of the U.S. flag shall be consistent with the federal flag code, 36 USC 173-8 as amended.

(f) Flagpoles shall be black, brown, dark green, white, silver, or bronze in color.

(g) Lighting may be allowed, but shall not direct glare onto any building on any other property.

(h) Pole heights, flag sizes, minimum distances, and setbacks.

(1) No side of any flag on a pole 35 feet or less in height shall be greater than six feet in length.

(2) Flags on poles over 35 feet in height may have a flag with a length of not more than 25 percent of the height of the pole.

(3) No flagpole shall exceed 50 feet in height.

(4) A minimum distance of six feet shall be maintained between flagpoles. All flags shall maintain a minimum setback of eight feet from all overhead power lines or easements and six feet from a property line.

(i) Encroachments.

(1) No flag may be erected within a utility easement.

(2) Neither the flag, flagpole, nor other support structure may extend over a right-of-way.

(3) Neither the flag, flagpole, nor any other support structure may extend over an adjoining property line.

(Ord. No. 2012-22, § 16(60-34), 11-5-2012)

Chapter 35 RESERVED

Chapter 36 SOLID WASTE [1]

ARTICLE I. - IN GENERAL

ARTICLE II. - COLLECTION

FOOTNOTE(S):

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State Law reference— Minimum standards of sanitation and health protection measures, V.T.C.A., Health and Safety Code ch. 341; local regulation of sanitation, V.T.C.A., Health and Safety Code ch. 342; Solid Waste Disposal Act, V.T.C.A., Health and Safety Code ch. 361; municipal solid waste, V.T.C.A., Health and Safety Code ch. 363; litter, V.T.C.A., Health and Safety Code ch. 365. (Back)

ARTICLE I. IN GENERAL

Sec. 36-1. Definitions.

Sec. 36-2. Littering prohibited.

Sec. 36-3. Enforcement.

Sec. 36-4. Unlawful deposits.

Secs. 36-5—36-26. Reserved.

Sec. 36-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Construction debris means all debris and waste material resulting from building or repairs, including but not limited to such items as scrap lumber, concrete, brick, scraps, wire and roofing materials.

Department means the public works department of the city.

Director means the public works director of the city.

Garbage means solid waste that is putrescible animal and vegetable waste materials from the handling, preparation, cooking or consumption of food, including waste materials from markets, storage facilities, and the handling and sale of produce and other food products.

Multiunit dwelling means any structure or group of structures normally used or intended for use by more than a single family. The term "multiunit dwelling" includes, but it is not limited to, apartment houses, hotels, motels, churches, schools and offices.

Premises means business houses, boardinghouses, offices, theaters, hotels, trailer or mobile home parks, restaurants, cafes, eating houses, tourist courts, apartments, sanitariums, roominghouses, schools, private residences, vacant lots and all other places within the city where garbage, trash or rubbish accumulate.

Trash means rubbish such as, but not limited to, feathers, tin cans, bottles, papers, rags, grass, boxes and cartons, old clothes and shoes, ashes, grass trimmings, hedge, tree, plant and shrub trimmings, leaves and limbs, yard cleaning and other similar items.

(Code 1978, § 9-1; Code 1993, § 62-1)

Sec. 36-2. Littering prohibited.

It shall be unlawful for any person to throw, drop, cast or deposit upon any street, alley, sidewalk or any yard or premises, public or private, any filth of any kind, including but not limited to garbage, trash or cans, paper, paper containers, rubbish, tree limbs, grass cuttings, bottles or any other form of litter or waste material.

(Code 1978, § 9-2; Code 1993, § 62-2)

State law reference— Litter, V.T.C.A., Health and Safety Code ch. 365.

Sec. 36-3. Enforcement.

The director of the public works department is hereby authorized to enforce such rules and regulations as are established by the city council and to make all necessary inspections and investigations to see that the terms of this chapter are being fulfilled.

(Code 1978, § 9-4; Code 1993, § 62-4)

Sec. 36-4. Unlawful deposits.

It shall be unlawful for any person to dump, unload, discharge, or in any manner place or cause to be placed any garbage, trash, or other waste materials of any kind or description whatsoever on any lot, tract or parcel of land located within the city limits, except at garbage dumps or dumping grounds which are owned, maintained or operated by the city, or in such places as are designated for garbage disposal by the superintendent of utilities.

(Code 1978, § 9-5; Code 1993, § 62-5)

Secs. 36-5—36-26. Reserved.

ARTICLE II. COLLECTION

DIVISION 1. - GENERALLY

DIVISION 2. - RESIDENTIAL

DIVISION 3. - COMMERCIAL

DIVISION 1. GENERALLY

Sec. 36-27. Accumulation prohibited.

Sec. 36-28. Applicability.

Sec. 36-29. Collection by city only.

Sec. 36-30. General disposal.

Sec. 36-31. Proper preparation and collection places.

Sec. 36-32. Meddling with containers.

Sec. 36-33. Fees, charges.

Sec. 36-34. Collection, payment.

Sec. 36-35. Exemption from collection fees for elderly.

Secs. 36-36—36-58. Reserved.

Sec. 36-27. Accumulation prohibited.

It shall be unlawful for any person to accumulate or allow to accumulate any garbage or refuse within the city.

(Code 1978, § 9-16; Code 1993, § 62-31)

Sec. 36-28. Applicability.

The provisions of this article shall apply to all territory within the corporate limits of the city.

(Code 1978, § 9-17; Code 1993, § 62-32)

Sec. 36-29. Collection by city only.

The collection and disposal of garbage and trash shall be by the city only and private or individual collection and disposal of garbage is prohibited, except as may be expressly authorized in this chapter. It shall be unlawful for any person to collect, pick up, or otherwise dispose of any garbage, trash or refuse within the city without first obtaining a written permit therefor granted by the city council.

(Code 1978, § 9-18; Code 1993, § 62-33)

Sec. 36-30. General disposal.

It shall be the duty of every person in charge of premises, including multiunit dwellings, within the city, to prepare the garbage, trash, construction debris and rubbish from such premises and timely place the same for collection by the city in accordance with the terms and conditions of this article.

(Code 1978, § 9-19; Code 1993, § 62-34)

Sec. 36-31. Proper preparation and collection places.

The city will not make collection of kitchen garbage, trash or rubbish, or tree limbs, or any other garbage where the same are not prepared for collection and placed, as designated by the terms of this chapter. Failure to comply with this provision will be an offense, and each day's failure to comply with same shall constitute a separate offense.

(Code 1978, § 9-20; Code 1993, § 62-35)

Sec. 36-32. Meddling with containers.

The meddling with garbage, trash or rubbish containers, cans or receptacles, or in any way pilfering, scattering contents, junking or other material herein contemplated, in any alley or street within the corporate limits is hereby prohibited.

(Code 1978, § 9-21; Code 1993, § 62-36)

Sec. 36-33. Fees, charges.

The fees and charges to be made and collected for the collection and removal of garbage and trash within the city shall be as currently established or as hereafter adopted by the city council from time to time and on file in the office of the city secretary.

(Code 1978, § 9-22; Code 1993, § 62-37)

Sec. 36-34. Collection, payment.

Charges and fees for the collection and removal of garbage and trash for the city shall be billed with and paid in the same manner as billing for utility services rendered by the city.

(Code 1978, § 9-23; Code 1993, § 62-38)

Sec. 36-35. Exemption from collection fees for elderly.

Any such person using the services of the city for the collection and removal of garbage shall be required to pay the fees and charges therefor as determined in section 36-33; provided, however, that any resident within the city over the age of 65 years may be exempted from the payment of the fee only by making an application to the city secretary stating therein their desire to be exempted from payment of the fees and charges collected by the city for the collection of such garbage and trash and stating therein that they are unable, financially, to pay such fees and charges, and such application shall be reviewed by the mayor, or his designate, who shall have final authority for either the granting or denying of such exemption.

(Code 1978, § 9-24; Code 1993, § 62-39)

Secs. 36-36—36-58. Reserved.

DIVISION 2. RESIDENTIAL

Sec. 36-59. Definitions.

Sec. 36-60. Disposal.

Sec. 36-61. Disposable containers required.

Sec. 36-62. Maintenance of containers.

Sec. 36-63. Placement of containers.

Sec. 36-64. Pilfering and tampering with garbage containers.

Sec. 36-65. City's collection schedule.

Sec. 36-66. Charges for collection.

Sec. 36-67. City not to collect if division violated.

Sec. 36-68. Disposal of heavy or dangerous accumulations.

Sec. 36-69. Unlawful collection.

Secs. 36-70—36-96. Reserved.

Sec. 36-59. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Dry kitchen refuse means the solids remaining from the preparation of food for immediate consumption, with all liquids or slop drained off.

Kitchen garbage means and includes dry kitchen refuse and all meat, vegetable and fruit refuse, small dead fowl and edible domesticated animal carcasses.

Residential, whether used as a noun, adjective or adverb, means a building or room fitted or used, in whole or in part, for human sleeping accommodations, including, but not limited to, except as otherwise expressly provided for in this division, residential subdivision houses, garage apartments and duplexes, triplex and quadruplex residential apartments, encompassing households and household activity.

Rubbish or *household rubbish* means tin cans, papers, empty bottles or glass containers of not more than five-gallon capacity, fragmented glass, scraps of iron or other metal, wire, used plastic articles, vacuum-cleaning lint, empty dry food, drug and notion boxes and like waste products of normal household activity able to be disposed in containers in accordance with this division.

Trash means containered or noncontainered used rubber articles, except automotive tires, pieces of wood, rope, feathers, fiberboard containers, empty used boxes, barrels and crates, weeds, grass, tree limbs and trimmings from shrubs.

(Code 1978, § 9-31; Code 1993, § 62-51)

Sec. 36-60. Disposal.

It shall be the duty of every person in charge of residential premises within the city to prepare the garbage, trash and rubbish from such premises and timely place the same for collection by the city in accordance with the terms and conditions of this article.

(Code 1978, § 9-32; Code 1993, § 62-52)

Sec. 36-61. Disposable containers required.

(a) The city shall provide, so long as funds are budgeted, each residential premises with city-approved containers/receptacles, for the disposal of accumulated dry kitchen refuse, kitchen garbage and rubbish. Cardboard boxes and other disposable containers may be used in addition to the city-provided containers/receptacles, provided that they are adequate for the purpose for which they are

used, as determined by the director of public works, and they shall not exceed a fluid capacity of 30 gallons and shall not exceed a weight capacity of 50 pounds and provided that they are tightly sealed and disposable. No additional containers of any shape, size or form will be emptied and returned to the curb.

(b) All loose trash accumulations shall be deposited in receptacles as specified in subsection (a) of this section and set out for collection. No item or trash subject to being blown by winds from its place of deposit for collection on the premises shall be deposited loose on the premises but shall be placed in the required receptacle.

(Code 1978, § 9-33; Code 1993, § 62-53)

Sec. 36-62. Maintenance of containers.

Garbage sacks and other disposable containers used for dry kitchen garbage and rubbish shall be maintained in sanitary condition and closed tightly when containing any dry kitchen refuse, kitchen garbage and/or rubbish.

(Code 1978, § 9-34; Code 1993, § 62-54)

Sec. 36-63. Placement of containers.

Garbage and trash in approved containers shall be placed at the curbline of the street, readily accessible to the city garbage vehicles. Where there is no curb, the director of public works will designate the location for placement of the containers. The department shall not make collection of garbage or trash where it is not prepared for collection and placed as designated by this chapter. Such containers shall be placed for collection no later than 7:00 a.m. on those days designated from time to time by the director of public works.

(Code 1978, § 9-35; Code 1993, § 62-55)

Sec. 36-64. Pilfering and tampering with garbage containers.

It shall be unlawful for any person to tamper with garbage sacks, other containers, trash receptacles or city sanitation container units, or to pilfer or scatter the contents thereof on any city street, alley or easement.

(Code 1978, § 9-36; Code 1993, § 62-56)

Sec. 36-65. City's collection schedule.

Every residential user of the city's garbage and rubbish collection service shall normally receive two collections each week according to a schedule to be determined by the director of public works. Garbage and household rubbish will be collected at the same time. Trash, particularly tree trimmings, will not normally be collected with the garbage and rubbish. Separate trash collections will be made according to the schedule determined by the director of public works.

(Code 1978, § 9-37; Code 1993, § 62-57)

Sec. 36-66. Charges for collection.

(a) There shall be charged, assessed and collected a monthly service charge for collection and disposal by the city as currently established or as hereafter adopted by resolution of the city council from time to time.

(b) The monthly service charge shall be collected on a monthly basis through the utility department of the city.

(c) All charges for services furnished by the city under this division shall be due and payable by 4:00 p.m. on the last business day of the month; provided, however, that if such due date shall fall on a legal holiday observed by the city, then such bill shall be due and payable by 12:00 midnight of the following business day. The cutoff day for payment of all charges for services is on the tenth day of the following month; failure to pay such charges by the cutoff date shall result in the discontinuance of the sanitation service for that customer and such services shall not be resumed until all such charges have been paid in full.

(Code 1978, § 9-38; Code 1993, § 62-58)

Sec. 36-67. City not to collect if division violated.

The city shall not collect kitchen garbage, rubbish, trash or tree limbs, where the same are not prepared for collection and placed in accordance with this division. The city's failure to collect shall not excuse the violation of any provision of this division or of any other city ordinance.

(Code 1978, § 9-39; Code 1993, § 62-59)

Sec. 36-68. Disposal of heavy or dangerous accumulations.

Heavy or dangerous accumulations such as, but not limited to, brick, broken concrete, lumber, timbers, ashes, cinders, dirt, plaster, sand or gravel, automotive frames, bodies or chassis, or parts thereof, dead trees, door and window frames, furniture, gasoline or electric motors and engines, refrigerators, washing machines, dryers, tricycles, bicycles, explosives, fireworks, ammunition, bottled acids or corrosive chemicals, and other bulky, heavy or dangerous materials shall not be collected by the city sanitation service, but shall be disposed of at the expense of the owner thereof, or of the person controlling same.

(Code 1978, § 9-40; Code 1993, § 62-60)

Sec. 36-69. Unlawful collection.

No person, except a duly authorized agent and employee of the city or a person hauling and transporting his own garbage, rubbish or trash, shall collect, haul, transport or empty garbage or trash receptacles or convey or transport garbage, rubbish or trash on the streets, alleys or easements of the city, except as previously provided in this division and by permit granted by the city council; provided, however, this provision does not prohibit persons or businesses with their own equipment from hauling, on a temporary basis, their own trash and debris from their own lot cleaning, construction or demolition operations in the city.

(Code 1978, § 9-41; Code 1993, § 62-61; Ord. No. 94-06, § 2.0, 4-4-1994)

Secs. 36-70—36-96. Reserved.

DIVISION 3. COMMERCIAL

Sec. 36-97. Definitions.

Sec. 36-98. Collection by city only.

Sec. 36-99. Applicability of other provisions.

Sec. 36-100. Placement of sanitation container units.

Sec. 36-101. Use of sanitation container unit.

Sec. 36-102. Unlawful use of containers.

Sec. 36-103. Accumulation of garbage or trash around container unit.

Sec. 36-104. Minimum charge.

Sec. 36-97. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Commercial means all premises from which garbage, refuse and trash are collected except those defined as residential and shall include specifically, but not be limited to, businesses of all types, multiunit dwellings, mobile home parks, apartments, townhouses and condominiums. Whether used as a noun, adjective or adverb, the term "commercial" refers to a business enterprise or activity wherein gross revenue is derived from services. Whenever the director of public works, the city administrator, or his designate, has designated a business enterprise activity as commercial, such designation shall be presumed correct hereunder, and if disputed, the burden shall be upon the owner or duly authorized agent to disapprove it, by sworn, audited records of such business enterprise or activity. An activity or enterprise shall also be deemed commercial, whenever the garbage, trash and rubbish collection policies under this chapter require use of sanitation container units.

Sanitation container unit means a metal box or container, fixed with a lid and equipped for handling by city sanitation vehicles, owned by the city and furnished to a commercial customer for sanitary use at fees to be prescribed by resolution of the city council and placed on file with the city secretary's office.

(Code 1978, § 9-52; Code 1993, § 62-71)

Sec. 36-98. Collection by city only.

The collection and disposal of commercial garbage and trash shall be by the city or under contract with the city only, and private or individual collection and disposal of garbage is prohibited, except as may be expressly authorized in this chapter. It shall be unlawful for any person to collect, pick up, or otherwise dispose of any garbage, trash or refuse within the city without first obtaining a written permit for such activities, granted by the city council; provided, however, this provision does not prohibit persons or businesses with their own equipment from hauling, on a temporary basis, their own trash and debris from their own lot cleaning, construction or demolition operations in the city.

(Code 1978, § 9-50; Code 1993, § 62-72; Ord. No. 94-06, § 3.0, 4-4-1994)

Sec. 36-99. Applicability of other provisions.

All provisions of this chapter shall apply to commercial garbage customers including those as set out for residential customers, except where regulations are specifically set out under this division and which apply to commercial customers only, and which are in conflict with other sections or divisions of this chapter.

(Code 1978, § 9-51; Code 1993, § 62-73)

Sec. 36-100. Placement of sanitation container units.

It shall be the duty of the public works director to inspect every new commercial premises throughout the city and to make arrangements for the sanitation servicing of such premises. The director of public

works shall thereafter provide information to the city for the purpose of setting the rate classification for the commercial premises. The public works director shall thereafter cause a sanitation container unit to be placed at the business for the use of the commercial customer and when the container smallest in size will adequately and completely serve several commercial customers, they may be required to use the same container and to pay a prorated part of the charge, as determined by the director of public works, according to the approximate relative quantity of space used, but in no event shall any user pay any less than the minimum charge established by the city.

(Code 1978, § 9-55; Code 1993, § 62-74)

Sec. 36-101. Use of sanitation container unit.

Lids and doors of all sanitation container units shall be kept closed at all times except when the container is being filled. Empty boxes shall be flattened before being placed in containers. The containers shall only be used by those commercial customers paying for such use. It shall be unlawful for any person to disturb a sanitation container unit furnished by the city or other authorized collection agency; and it shall be unlawful to disturb the contents thereof. However, this shall not apply to the owner or occupant of the premises which such container has been furnished, nor to their employees, nor to the duly authorized employees of the department.

(Code 1978, § 9-56; Code 1993, § 62-75)

Sec. 36-102. Unlawful use of containers.

It shall be unlawful to make a fire or burn any material in a sanitation container unit furnished by the city or to paint or mark upon same, or to place any poster, placket or sign upon same.

(Code 1978, § 9-57; Code 1993, § 62-76)

Sec. 36-103. Accumulation of garbage or trash around container unit.

Whenever it has been determined that any owner or occupant will receive sanitation container unit service for the removal of garbage and trash, it shall be unlawful for such owner or occupant to allow any accumulation of garbage or trash around such container or in the vicinity of such container and it shall be their duty to place all garbage and trash in such container. The use of any other system or garbage container for collection by the department when sanitation container system service is provided other than as set forth in this section shall be unlawful.

(Code 1978, § 9-58; Code 1993, § 62-77)

Sec. 36-104. Minimum charge.

The minimum charge established by the city council will remain in effect and will apply to all residential and commercial customers whether or not the establishment uses the collection service of the city.

(Code 1978, § 9-59; Code 1993, § 62-78)

Chapter 37 RESERVED

Chapter 38 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES [1]

ARTICLE I. - IN GENERAL

ARTICLE II. - SIGHT OBSTRUCTIONS AT INTERSECTIONS

ARTICLE III. - STREET NUMBERING

ARTICLE IV. - EXCAVATIONS

ARTICLE V. - STREET AND DRAINAGE FACILITIES

ARTICLE VI. - USE OF PUBLIC RIGHTS-OF-WAY

ARTICLE VII. - USE OF RIGHTS-OF-WAY BY PROVIDERS OF TELECOMMUNICATIONS SERVICES

FOOTNOTE(S):

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State Law reference— Public buildings and grounds, V.T.C.A., Local Government Code ch. 281 et seq.; parks and other recreational and cultural resources, V.T.C.A., Local Government Code ch. 306 et seq. (Back)

ARTICLE I. IN GENERAL

Sec. 38-1. Certain ordinances relating to streets and sidewalks not affected by Code.

Sec. 38-2. Obstruction of sidewalks.

Sec. 38-3. Obstruction of drainage.

Sec. 38-4. Obstruction of public ways.

Sec. 38-5. Interference, obstruction of public improvements prohibited.

Sec. 38-6. Manner of work; cleanliness of premises.

Secs. 38-7—38-30. Reserved.

Sec. 38-1. Certain ordinances relating to streets and sidewalks not affected by Code.

(a) Nothing in this Code or the ordinance adopting this Code shall affect any ordinance:

(1) Dedicating, accepting, naming, establishing, locating, relocating, opening, widening, improving or vacating any street or other public way in the city.

(2) Establishing or prescribing grades for streets in the city.

(3) Assessing costs of constructing streets and sidewalks, etc.

(4) Relating to municipal street maintenance agreements with the state.

(b) All such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code.

(Code 1978, § 22-1; Code 1993, § 66-1)

Sec. 38-2. Obstruction of sidewalks.

It shall be unlawful for any person to, in any manner, obstruct the use by pedestrians of any sidewalk, public easement or street in the city by placing, depositing or suffering to remain thereon, or permitting any of his servants, employees or persons under his control, to deposit, place or suffer to remain thereon, any goods, wares, merchandise, material, vehicle or other objects whatever.

(Code 1978, § 22-3; Code 1993, § 66-3)

Sec. 38-3. Obstruction of drainage.

It shall be unlawful for any person to obstruct, close up or fill any street gutter or public drainageway of any kind for any purpose.

(Code 1978, § 22-5; Code 1993, § 66-5)

Sec. 38-4. Obstruction of public ways.

(a) It shall be unlawful for any person within the city without obtaining a permit to erect, construct, reconstruct, alter or repair or to permit the erection, construction, reconstruction, alteration or repair of any fence, wall, hedge, structure or any other character of obstruction:

(1) Over, on or across any public property, way, alley, street, sidewalk or park; or

(2) Between the property line of any lot and a public street or alley line.

(b) Any person who shall violate any of the provisions of this section or fails to comply therewith shall be guilty of a misdemeanor. The owner of any building or premises or part thereof, where anything in violation of this section shall be placed or exists, and any architect, builder, contractor, agent or person assisting in the commission of any such violation shall also be guilty of a separate misdemeanor.

(Code 1978, § 22-6; Code 1993, § 66-6)

Sec. 38-5. Interference, obstruction of public improvements prohibited.

It shall be unlawful for any person to interfere with or obstruct any public improvements authorized by the city council, the mayor or other city officials by means of threats, coercion, duress or any other method whatsoever, either directly or indirectly.

(Code 1978, § 22-7; Code 1993, § 66-7)

Sec. 38-6. Manner of work; cleanliness of premises.

All work done or performed under the provisions of this chapter shall be done or performed in a good workmanlike manner. Such work shall not be accepted or approved by the city until the premises thereof have been cleaned and cleared of all debris, trash and rubbish which may have accumulated during such work.

(Code 1978, § 22-8; Code 1993, § 66-8)

Secs. 38-7—38-30. Reserved.

ARTICLE II. SIGHT OBSTRUCTIONS AT INTERSECTIONS

Sec. 38-31. Definitions.

Sec. 38-32. Enforcement of article provisions.

Sec. 38-33. Visibility triangle.

Sec. 38-34. Obstructions prohibited in visibility triangle.

Secs. 38-35—38-56. Reserved.

Sec. 38-31. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Street gutter flow line means the street gutter flow line of the curb adjacent to and bordering upon each restricted area; if there is no such curb, the height restrictions set forth in this article shall be based upon the actual level of the paved or used portion of the public street adjacent to and bordering upon each such restricted area.

(Code 1978, § 22-20; Code 1993, § 66-31)

Sec. 38-32. Enforcement of article provisions.

In addition to any penalty which may be imposed for the violation of this article, the city shall be entitled to enter upon and remove from the triangular corner areas described in this article any of the growths prohibited by this article. Such entry and removal shall be without liability to the owners thereof.

(Code 1978, § 22-21; Code 1993, § 66-32)

Sec. 38-33. Visibility triangle.

The visibility triangle area restricted by the provisions of this article is as follows:

All of that portion of land lying within a triangular-shaped area on each street corner within the city described as follows: beginning at the precise corner of intersection point of the curbs or edge of pavement of each of the two streets forming each corner and extending 45 feet along each such curbline or pavement line from such intersection point, the third side being determined by the drawing of a straight line from the ends of such 45-foot extensions, whether such land be privately owned or unpaved or untraveled street right-of-way property.

(Code 1993, § 66-33; Ord. No. 2002-14, § 1, 5-20-2002)

Sec. 38-34. Obstructions prohibited in visibility triangle.

(a) No person shall place or maintain any sign in that portion of land lying within a visibility triangle area unless such sign does not exceed three feet in height above the lowest surface of the adjoining streets, or such signs have at least 15 feet from the bottom of the sign to the highest surface of the adjoining streets. No sign within such area may be supported by more than two posts or beams and the size of such posts or beams shall not exceed ten inches in diameter and such supports or beams may not be placed closer together than 24 inches.

(b) No person shall plant, grow, or maintain in any visibility triangle area any plant, hedge, shrub, or other growth which exceeds three feet in height above the lowest surface of the adjoining street, except trees which have no branches or foliage extending from the trunk thereof at a height lower than 15 feet from the highest surface of the adjoining streets.

(Code 1993, § 66-34; Ord. No. 2002-14, § 2, 5-20-2002)

Secs. 38-35—38-56. Reserved.

ARTICLE III. STREET NUMBERING

Sec. 38-57. Required; placement of numbers.

Sec. 38-58. Base lines.

Sec. 38-59. Street prefix designation.

Sec. 38-60. How numbered—Generally.

Sec. 38-61. Same—Residential frontage.

Sec. 38-62. Same—Commercial frontage.

Sec. 38-63. Same—Corner lots.

Sec. 38-64. Same—Apartments.

Secs. 38-65—38-88. Reserved.

Sec. 38-57. Required; placement of numbers.

(a) It shall be the duty of the owner and occupant of every building in the city to have placed in a place clearly visible from the street on which the building fronts, numbers or figures at least 2½ inches high and of a contrasting color of the building showing the assigned street number of the building.

(b) If a building is set back from the street on which it fronts more than 50 feet or is located in such a manner that numbers placed on the building would not be clearly visible from the street, it shall be the duty of the owner and occupant of the building in the city to have placed in or on a permanent structure clearly visible from the street on which the building fronts, numbers or figures at least 2½ inches high and of a contrasting color of the structure on which they are placed showing the assigned street number of the building.

(c) In the case of apartment buildings in the city, it shall be the duty of the owner and manager, in addition to the provisions of subsections (a) and (b) of this section, to have a number system for each individual building. The numbers shall be at least 2½ inches high and of a contrasting color of the building showing the assigned number for the building. The numbers shall be clearly visible from the parking and drive-through areas of the complex.

(d) In the case of buildings under construction, it shall be the duty of the owner and builder of the buildings in the city to have placed at all times in a place clearly visible from the street on which the building under construction fronts, numbers or figures at least 2½ inches high and of a contrasting color of the structure on which the numbers or figures are temporarily affixed showing the assigned street number of the building under construction.

(Code 1978, § 22-50; Code 1993, § 66-76; Ord. No. 90-03, § 2, 7-2-1990)

Sec. 38-58. Base lines.

For the purposes of this article, the north-south base line shall be the center of Main Street, and the east-west base line shall be the main line of the Rock Island Railroad.

(Code 1978, § 22-51; Code 1993, § 66-77)

Sec. 38-59. Street prefix designation.

All streets or avenues east of the main line of the Rock Island Railroad shall carry the prefix "East" and all streets or avenues west of the main line of the Rock Island Railroad, the prefix "West." All streets or avenues north of Main Street shall carry the prefix "North" and all streets or avenues south of Main Street shall carry the prefix "South."

(Code 1978, § 22-52; Code 1993, § 66-78)

Sec. 38-60. How numbered—Generally.

Commencing from the base lines, and going in any direction, the first block shall be designated the 100 block, the second block the 200 block and so on. The block lines shall fall on corresponding points on all parallel streets as far as practical and reasonable. The numbers shall begin at even 100 at each cross street, except, on unusually long blocks the new block number may start at a point on such long block to be designated. Odd numbers shall be assigned to the east and south sides of streets and even numbers shall be assigned to the west and north sides of streets.

(Code 1978, § 22-53; Code 1993, § 66-79)

Sec. 38-61. Same—Residential frontage.

Residential frontage shall be numbered depending upon the layout of the property and the building restrictions placed upon the same. Only one number shall be assigned to each residential lot.

(Code 1978, § 22-54; Code 1993, § 66-80)

Sec. 38-62. Same—Commercial frontage.

Commercial frontage shall be numbered depending upon the original layout of the block and the manner in which the property is developed.

(Code 1978, § 22-55; Code 1993, § 66-81)

Sec. 38-63. Same—Corner lots.

Any building, either residential or commercial, located on a corner lot may be assigned a number on either or both streets.

(Code 1978, § 22-56; Code 1993, § 66-82)

Sec. 38-64. Same—Apartments.

(a) An apartment house shall take the number allotted to the space upon which it is located, but the separate apartments shall be designated by a suffix indicating separate apartments. In case an apartment house is located on a corner lot and has an entrance on each street, each entrance may carry the number assigned on the street it faces. If each entrance leads to only one apartment, the alphabetical suffix need not be used.

(b) A garage apartment located on an interior lot shall take the suffix number of the premises upon which it is located. A garage apartment located on a corner lot and not facing the same street as the main house occupying the same premises upon which the garage apartment is located shall take the number assigned to the space it occupies on the street it faces; no suffix being necessary.

(Code 1978, § 22-57; Code 1993, § 66-83)

Secs. 38-65—38-88. Reserved.

ARTICLE IV. EXCAVATIONS

Sec. 38-89. Permit—Required.

Sec. 38-90. Same—Application.

Sec. 38-91. Same—Bond required.

Sec. 38-92. Same—Issuance.

Sec. 38-93. Protection of public.

Sec. 38-94. Supervision of work.

Sec. 38-95. Duties upon completion of work.

Sec. 38-96. Acceptance, inspection of completed work.

Sec. 38-97. Boring may be required.

Sec. 38-98. Trench safety systems.

Secs. 38-99—38-124. Reserved.

Sec. 38-89. Permit—Required.

It shall be unlawful for any person to make any excavation or opening in any street, alley or public highway of the city without first having obtained a permit from the street superintendent to do so.

(Code 1978, § 22-70; Code 1993, § 66-106)

Sec. 38-90. Same—Application.

The application for a permit to make any excavation or opening in any of the streets, alleys or public highways of the city shall be made to the street superintendent and state clearly the name of the street or highway in which it is proposed to make such an opening; the exact location in the highway wherein it is proposed to make such opening; the purpose of making the opening; and the name of the person who proposes to make such excavation or opening.

(Code 1978, § 22-71; Code 1993, § 66-107)

Sec. 38-91. Same—Bond required.

The street superintendent shall estimate the probable cost of replacing the soil which may be removed from such public street or highway; and shall require the applicant to file a written bond in an amount sufficient to cover such cost, with two or more sufficient sureties, conditioned that the street shall be restored in as good condition as it was before the excavation or opening therein was made. Such bond shall be received and approved by the street superintendent. If the applicant elects so to do, he may make a cash deposit in such sum as may have been fixed by the street superintendent in lieu of the written bond.

(Code 1978, § 22-72; Code 1993, § 66-108)

Sec. 38-92. Same—Issuance.

When the bond or deposit required in this article shall have been accepted by the street superintendent, he shall then issue a permit for the excavation or opening named in the application, and the applicant may then proceed with the work in the exact location named in his application, and in no other place.

(Code 1978, § 22-73; Code 1993, § 66-109)

Sec. 38-93. Protection of public.

It shall be the duty of any person making an excavation in the streets of the city to adequately and sufficiently protect all such excavations by barricades or other obstructions, including not less than one red light on each side of such excavation during the nighttime, so as to prevent accidents or injury to persons or property until such time as such excavation is resurfaced and approved by the street superintendent.

(Code 1978, § 22-74; Code 1993, § 66-110)

Sec. 38-94. Supervision of work.

All the work of excavating or making any character of opening in any of the streets, alleys or highways of the city shall at all times be under the supervision of the street superintendent, and the person doing such work shall do the same in the manner directed by him to the end that the streets and highways of the city shall not be unduly disturbed and traffic thereon obstructed.

(Code 1978, § 22-75; Code 1993, § 66-111)

Sec. 38-95. Duties upon completion of work.

After the excavation or opening shall have been made, the person so making it shall backfill the excavation with such materials and in such manner as the street superintendent may require, and leave the street or highway in the same condition as it was before the opening therein was made.

(Code 1978, § 22-76; Code 1993, § 66-112)

Sec. 38-96. Acceptance, inspection of completed work.

The conditions of the bond required by this article shall not be considered to have been complied with until the street superintendent shall have accepted the street or highway as being in good condition. If the person making the opening shall fail to leave the highway in a good state of repair, satisfactory to the street superintendent, then the superintendent shall call upon the bondsmen to pay for the cost of repairing such highway; provided, however, that if a cash deposit instead of a bond is made, the superintendent may proceed to have the street or other highway put in good condition, paying the same out of the deposit made with him, and if there is any remainder of the deposit after paying for such work, such remainder shall be refunded to the person making the deposit.

(Code 1978, § 22-77; Code 1993, § 66-113)

Sec. 38-97. Boring may be required.

Notwithstanding the provisions of this article, the street superintendent may require work to be accomplished under this article to be performed by boring under the streets, alleys, public highways or sidewalks in the city.

(Code 1978, § 22-78; Code 1993, § 66-114)

Sec. 38-98. Trench safety systems.

(a) On every construction project in which trench excavation will exceed a depth of five feet, the bid documents and the contract for the project must include the following:

(1) Detailed plans and specifications for trench safety systems that meet occupational safety and health administration standards.

(2) Within the plans and specifications, a pay item for the trench safety systems.

(b) The building official shall require, on every project which includes any significant trench or excavation, that any required permit application include a certificate signed and sealed by a registered professional engineer which states that plans and specifications for the project have been prepared by the engineer or under the engineer's direction and control and either:

(1) That the project does not involve any trench excavation that will exceed a depth of five feet; or

(2) That the project does involve trench excavation that will exceed five feet in depth and that the bid documents and the contract for the project comply with subsection (a) of this section.

(c) In cases of projects for which only a plumbing permit is required, a licensed master plumber or a registered professional engineer may make a certificate required by this section.

(Code 1978, § 22-79; Code 1993, § 66-115)

State law reference— Trench safety standards, V.T.C.A., Health and Safety Code § 756.021 et seq.

Secs. 38-99—38-124. Reserved.

ARTICLE V. STREET AND DRAINAGE FACILITIES

Sec. 38-125. When construction permitted.

Sec. 38-126. When payback is applicable; basis.

Sec. 38-127. Approval by the city.

Sec. 38-128. Preparation of map.

Sec. 38-129. Conformity to city standards.

Sec. 38-130. Violations.

Secs. 38-131—38-158. Reserved.

Sec. 38-125. When construction permitted.

All persons, including subdividers, property owners and developers, hereinafter referred to as "subdividers," who own or control property and who, in the opinion of the city council, or such other officer as may be designated for the purpose, must construct street or drainage facilities in such a manner that they will benefit other property owners, may at their cost and expense construct such street and drainage facilities in accordance with the master plan of the city and in accordance with such conditions as may be prescribed by the ordinances of the city or the city council.

(Code 1978, § 5-71; Code 1993, § 66-136)

Sec. 38-126. When payback is applicable; basis.

The payback provisions of this article shall only apply to street and drainage facilities which are constructed outside of the property being developed by the subdivider. Any street or drainage facilities constructed within the subdivision or property of the subdivider shall not be taken into consideration when determining the amount of payback under this article. It is hereby declared that all street and drainage facilities constructed under the provisions of this article shall be in all respects owned, managed, controlled and regulated by the city, and connections made therewith shall be governed and regulated by the city, and connections made therewith shall be governed and regulated in the same manner as connections with any street and drainage facility, except that the right is hereby reserved to subdividers constructing same to receive, for use by private individuals, a payback for the subdivider's cost of constructing the street or drainage facility. The payback amount is to be based on a pro rata share of the initial cost of the construction as it relates to the number of square feet in the tract being serviced or benefited by the construction of the street or drainage facility. The amount of reimbursement to the subdivider constructing the street or drainage facility shall be established by the city council after a hearing which establishes the cost of the construction and the area to be serviced or benefited by such construction.

(Code 1978, § 5-72; Code 1993, § 66-137)

Sec. 38-127. Approval by the city.

(a) Before beginning any construction of the facilities or improvements authorized in this article, complete plans and specifications for such improvements shall have first been completely approved by the director of public works and the city engineer as meeting the city's standards.

(b) The director of public works, or his duly authorized representative, shall from time to time inspect the construction of all street and drainage facilities during the course of construction to see that the same comply with the city's standards governing the same. In this regard, free access shall be accorded the director of public works and his duly authorized representative by the subdivider, his agents and employees. Inspection by the director of public works or a failure of the director of public works to inspect construction shall not in any way impair or diminish the obligation of the subdivider to install improvements in accordance with the plans and specifications therefor as approved by the city engineer and director of public works in accordance with the city's standards.

(Code 1978, § 5-73; Code 1993, § 66-138)

Sec. 38-128. Preparation of map.

Upon the construction of the street and drainage facilities by the subdivider, who has a right of payback for the construction of such street or drainage facility, the city shall prepare a map indicating the area within which any use or benefit from the street or drainage facilities would require a payback to the subdivider who initially constructed the street or drainage facility. This map designating the area in which a payback would result shall be placed of public record at the city hall and all developers applying for permits shall be made aware of the existence of the map and the cost of developing and using the street and drainage facilities.

(Code 1978, § 5-74; Code 1993, § 66-139)

Sec. 38-129. Conformity to city standards.

The street and drainage facilities constructed under this article shall conform to the recommendations of the city engineer and director of public work in the design, size and layout of the

street and drainage facility. The street design shall be acceptable to the city and such street shall not be accepted as a city street until all acceptances have been obtained.

(Code 1978, § 5-75; Code 1993, § 66-140)

Sec. 38-130. Violations.

Any subdivider who constructs any street or drainage facility or makes use of any street or drainage facility for which a payback would be due under this article without having first complied with the provisions of this article or who shall violate any of the provisions of this article shall be guilty of an offense. Cumulative of any other remedy available to it, the city may proceed by injunction or other appropriate remedy to correct any violation of this article.

(Code 1978, § 5-76; Code 1993, § 66-141)

Secs. 38-131—38-158. Reserved.

ARTICLE VI. USE OF PUBLIC RIGHTS-OF-WAY

Sec. 38-159. Definitions.

Sec. 38-160. Unauthorized use of public rights-of-way prohibited.

Sec. 38-161. Registration required.

Sec. 38-162. Construction within public rights-of-way.

Sec. 38-163. Construction regulations.

Sec. 38-164. Conservation of public rights-of-way.

Sec. 38-165. Relocation or removal of facilities.

Sec. 38-166. Obsolete facilities.

Sec. 38-167. Bonding.

Sec. 38-168. Temporary rearrangement of aerial wires and cables.

Sec. 38-169. Tree trimming.

Sec. 38-170. Erosion and stormwater measures.

Sec. 38-171. Placement of facilities.

Sec. 38-172. Line location and identification.

Sec. 38-173. Planning for capital improvement projects.

Sec. 38-174. Guarantee of performance.

Sec. 38-175. Insurance and indemnity.

Sec. 38-176. Revocation or denial of construction permits.

Sec. 38-177. Appeal from denial or revocation of permit.

Sec. 38-178. Conflicts with existing franchises.

Sec. 38-179. Notice.

Sec. 38-180. Penalties/remedies.

Secs. 38-181—38-198. Reserved.

Sec. 38-159. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Emergency means a situation which, unless immediate remedial action is taken, will likely result in harm to public health, safety, and/or welfare.

Facilities or *facility* means and includes, but shall not be limited to, pipes, conduits, wires, cables, towers, switches, amplifiers, transformers, fiber optic lines, antennae, poles, ducts, conductors, lines, mains, vaults, appliances, attachments, equipment, structures, manholes, fixtures, appurtenances, and such other objects, devices, or other items of tangible personal property, which are designed, constructed, installed, placed, used or operated in, upon, over, across, above, or below public rights-of-way. Notwithstanding the foregoing, structures designed and constructed for the support and passage of vehicular and pedestrian traffic, such as streets, alleys, highways, driveways, and sidewalks, whether at, below, or above grade, shall not be deemed to be facilities. Provided further, a private, individually owned connection and/or attendant downstream service line or device, through which a utility service is received by the end user owning same, for which required permits have been issued under applicable building, plumbing, electrical, or other codes of the city, shall not be deemed as facilities hereunder.

Public rights-of-way or *public right-of-way* means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, easement, or similar property within the corporate limits of the city, and in which the city holds a property interest (fee title, easement or otherwise), or over which the city holds and exercises a right of management or control, and which, consistent with the purposes for which it was acquired or dedicated, may be used for the installation and maintenance of facilities.

User means a person having facilities within a public right-of-way.

(Code 1993, § 66-166; Ord. No. 2000-29, § 2, 12-4-2000)

Sec. 38-160. Unauthorized use of public rights-of-way prohibited.

Except as otherwise specifically provided by law or this article, it shall be unlawful for any person to cause or permit the placement, construction, operation or maintenance of any facility within public rights-of-way, unless authorization has been granted by the city in accordance with this article.

(Code 1993, § 66-167; Ord. No. 2000-29, § 3, 12-4-2000)

Sec. 38-161. Registration required.

It shall be unlawful for any person to place facilities within public rights-of-way without having first filed with the city an application for registration therefor. Applications for registration shall be filed with the city secretary. The city secretary shall issue a registration certificate to each person successfully completing and filing such application. Each registration certificate shall be issued in the name of the user. Registration certificates shall be renewed every 60 months. When information provided in an application for a registration certificate is no longer correct, the user shall inform the city, in writing, within 30 days following the date of such change. Each application for registration shall include:

(1) The name and legal status of the user;

(2) The name, address, telephone number, e-mail address, and fax number of the individuals who will be the contacts for the user;

(3) The name, address, telephone number, e-mail address, and fax number of the individuals who will be the contacts for field location of facilities;

(4) The name, address, telephone number, e-mail address and fax number of an emergency contact who shall be available 24 hours a day; and

(5) Proof of insurance and bonding, as otherwise required by this article.

(Code 1993, § 66-168; Ord. No. 2000-29, § 4, 12-4-2000)

Sec. 38-162. Construction within public rights-of-way.

It shall be unlawful for any person to cause or permit the construction or installation of facilities within public rights-of-way within the city, except as provided by this article and any other ordinance of the city applicable thereto.

(Code 1993, § 66-169; Ord. No. 2000-29, § 5, 12-4-2000)

Sec. 38-163. Construction regulations.

(a) *Excavations.* All excavations and other construction in the public rights-of-way shall be performed in accordance with all applicable state, federal, and city regulations.

(b) *Interference with use of property.* All construction within public rights-of-ways shall be undertaken so as to minimize interference with the use of public and private property and in accordance with any lawful direction given by the city under the police and regulatory powers of the city.

(c) *Construction permits.* It shall be unlawful for any person to cause or permit any work which involves the construction, installation, expansion, repair, removal, or maintenance of facilities within public rights-of-way without having first applied for and obtained from the city a construction permit therefore; provided, however, acquisition of construction permits shall not be required for any such work that does not involve the alteration or disturbance of the surface of the right-of-way. Each construction permit application shall include a written work description, including construction drawings, showing the facilities' location (or proposed location) and the estimated depth of the facilities (existing and proposed) in the immediate area of the proposed new construction. Such drawings shall be reviewed by the city and, if disapproved, returned with comments setting forth the reasons for such disapproval. Approvals shall not be unreasonably withheld or delayed. Except as otherwise specifically provided herein, work shall not commence until applicable construction permits have been approved therefor. Review and approval by the city of construction permits as provided in this article shall not constitute any representation or warranty regarding the sufficiency of design or construction of such facilities. All such work shall be in conformance with the approved construction permit.

(1) Work for which a permit is required may be performed at any time; provided, however, any such permitted work performed within 500 feet of any residential structure may only be performed between the hours of 6:00 a.m. and 10:00 p.m. Any permitted work performed outside of the above working hours must be approved in advance by the director of public works or his designee.

(2) Provided further, all such construction and/or installation work shall be completed in the time specified in the construction permit. If the work cannot be completed within the specified time period, the user may request an extension from the director of public works, or his designee, which extension shall not be unreasonably withheld.

(d) *Emergency repairs; restoration of service.* Notwithstanding subsection (c) of this section, during an emergency where, in the good faith judgment of the user, failure to act immediately could jeopardize public health, safety, or general welfare, or in situations where a repair is necessary to restore service to a customer, such user may perform repairs to facilities within public rights-of-way, which involve the alteration or disturbance of the surface of such public right-of-way, without prior notification to, or acquisition of, a construction permit from the city. In such cases, the user shall notify the director of public works of the city as promptly as possible after beginning the work, but in no event later than the close of business on the next business day, stating the nature of such repairs and, if not completed, the length of time estimated to complete same. The user shall apply for the

required approvals as soon as reasonably practicable, and any work performed that is not consistent with then-applicable city standards shall be corrected upon notice thereof from the city.

(e) *Restoration of surface.* Users may excavate public rights-of-way only for the purpose of, and to the extent reasonably required for, the construction, installation, expansion, repair, removal, or maintenance of its facilities. Upon completion of work, the user shall promptly restore the surface of the affected public right-of-way to a condition that equals or exceeds its condition prior to such construction. To such end, the restoration shall comply with the following requirements:

(1) Replacing all ground cover equal to or better than the type of ground cover damaged during work, either by sodding or seeding, or natural growth;

(2) Installation of all manholes and handholds as required;

(3) All bore pits, potholes, trenches or any other holes shall be filled in or covered daily, unless other safety requirements are approved by the director of public works;

(4) Leveling of all trenches and backhoe lines;

(5) Restoration of excavation site to city specifications; and

(6) Restoration of all landscaping and other affected structures such as sprinkler systems and mailboxes.

(f) *Maintenance period; delay in construction.* All restoration work shall be maintained by the user to the satisfaction of city for a period of one year from the date of completion of such restoration work. No public right-of-way shall be encumbered by construction, maintenance, removal, restoration, or repair work for a longer period than shall be necessary to execute such work. If there is an unreasonable delay by the user in restoring and maintaining the public right-of-way or restoring such public right-of-way after such excavations, construction, installation or repairs have been made, the city shall notify the user in writing that, if such restoration or maintenance is not performed within five days of receipt of such notice, the city shall have the right to restore or repair the same and to require the user to pay the reasonable cost of such restoration or repair. Furthermore, if restoration is not satisfactory and performed in a timely manner, all work in progress, except that related to the problem, including all work previously permitted but not complete, may be halted and a hold may be placed on any permits not approved until all restoration is complete.

(g) *Routine maintenance.* Routine maintenance on facilities located within public rights-of-way shall be conducted in a manner that is consistent with applicable city regulations governing such work, if any.

(h) *Obstructions to traffic.* Any obstruction of vehicular or pedestrian traffic resulting from construction or repair activities to facilities, other than for emergency repairs, shall require prior notification to the director of public works. Any such work shall be performed in a manner calculated to cause the least inconvenience to the city and the public as is reasonably possible under the circumstances. When a user performs or causes to be performed any work over or across a public street or sidewalk, or so closely adjacent thereto as to create hazards for the public or itself, the user shall provide construction and maintenance signs and sufficient barricades and flagmen at such sites as are reasonably necessary to protect the public and the user's equipment and workers. The application of such traffic control devices shall be consistent with the standards and provisions of the latest edition of the Texas Manual on Uniform Traffic Control Devices. Appropriate warning lights shall be used at all construction and maintenance zones where one or more traffic lanes are being obstructed during nighttime conditions.

(i) *Closing of streets.* If a user's work requires the obstruction of any street for a period longer than 30 minutes, such obstruction shall be approved by director of public works. The user shall not close any public street, but shall, at all times, maintain a route of travel along and within any roadway that is within a public right-of-way; provided, however, in cases of an emergency, The director of public works may authorize the temporary closing of a public street or sidewalk to allow the user to complete such emergency repairs if, in the opinion of the director of public works, such closing is necessary to protect the safety of the general public.

(j) *Construction drawings.* Within 120 days following completion of construction, or within 120 days following any material alteration or modification thereto, the user shall supply the city with a complete set of construction drawings for the work, or for the material alteration or modification thereof, unless the user certifies to the city, in writing, that such construction was completed in accordance with the construction plans filed pursuant to subsection (c) of this section, in which case such construction plans shall be marked accordingly by the city and filed as the permanent construction drawings. For the purposes of this section, a material alteration or modification of a facility shall be deemed to have occurred if such alteration or modification would render the existing construction drawings inaccurate and/or misleading regarding the location of a structural component thereof. Such drawings shall be of sufficient detail to allow the city to determine the location of the facilities with reasonable accuracy. In lieu of print documents, a user may, upon advance reasonable request, provide such drawings and maps by other mediums, including electronic mediums, provided the city has the capacity to access such information.

(Code 1993, § 66-170; Ord. No. 2000-29, § 6, 12-4-2000)

Sec. 38-164. Conservation of public rights-of-way.

(a) To the extent the city may be authorized by state or federal law to do so, and to the extent reasonable under the circumstances then existing, the city may require a user to attach portions of its facilities to other facilities within the public rights-of-way owned and maintained by other persons. A user shall not be required to attach its facilities to the facilities of such other persons if it is shown that such user would be subjected thereby to increased risks of interruption to its service, increased liability for accidents, or unreasonable delays in construction or availability of service; if the facilities of such other person are not of the character, design, or construction required by, or are not being maintained in accordance with, current practice; or are not available to the user on reasonable terms, including, without limitation, reasonable fees.

(b) Insofar as is practical to do so, users shall use existing facilities in the provision of their services; provided, however, nothing contained in this article shall be construed as limiting a user from expanding its facilities to accommodate future growth and development. Users shall provide information to the city relating to the location and/or operation of their facilities or services as may be reasonably necessary for municipal planning purposes.

(Code 1993, § 66-171; Ord. No. 2000-29, § 7, 12-4-2000)

Sec. 38-165. Relocation or removal of facilities.

(a) To the extent the city may be authorized by law to do so, a user may be required to lower, place underground, relocate, or remove any facility within any public right-of-way, without cost to the city, if reasonably necessary, as determined by the city council, to abate a condition actually or potentially dangerous to public health or safety, or as may be reasonably necessary to accommodate the construction, repair, maintenance, removal, or installation of any publicly funded city project within the city in, upon, or under public rights-of-way, including, without limitation, street construction and widening, water, sanitary sewer, storm drains, street lights and traffic signal conduits, or any other public facilities in, upon, or under the public rights-of-way. In the alternative, where the city council determines it to be feasible, a user may be allowed to pay the additional costs incurred for the design and/or construction of any such publicly funded city project in a manner that would avoid the necessity of relocation or removal of the facilities. A user shall be provided the opportunity to collaborate in advance with the city and/or propose alternatives in order to minimize cost, better schedule the work, and accommodate suitable refinements and/or joint work with others.

(b) In the event of any such requirement for lowering, placing underground, relocating, or removing facilities as herein provided, the user shall complete same as soon as is reasonably practicable following written notice thereof by the city.

(Code 1993, § 66-172; Ord. No. 2000-29, § 8, 12-4-2000)

Sec. 38-166. Obsolete facilities.

Users shall remove facilities from the public rights-of-way when such facilities are obsolete, are no longer in service, and create either visual blight or a nuisance to the public; provided, however, a user shall not be required to remove any facility for which renovation or restoration is planned by the user, and which renovation or restoration is completed within a reasonable period of time. When permanent structures in public rights-of-way are removed, the city shall be notified in writing of such removal.

(Code 1993, § 66-173; Ord. No. 2000-29, § 9, 12-4-2000)

Sec. 38-167. Bonding.

All users other than governmental units shall comply with all applicable regulations of the city relating to the provision of bonds or other security which may be required in connection with work in public rights-of-way.

(Code 1993, § 66-174; Ord. No. 2000-29, § 10, 12-4-2000)

Sec. 38-168. Temporary rearrangement of aerial wires and cables.

Upon request, a user shall remove, raise or lower its aerial facilities temporarily to permit the moving of houses or other bulky structures. The expense of such temporary rearrangements shall be paid by the party requesting same, excluding requests by the city. The user may require payment in advance. The user shall be given a reasonable amount of advance notice to provide for such rearrangement.

(Code 1993, § 66-175; Ord. No. 2000-29, § 11, 12-4-2000)

Sec. 38-169. Tree trimming.

Users shall comply with all applicable rules and regulations of the city governing the trimming, grooming, or removal of trees or other similar vegetative matter.

(Code 1993, § 66-176; Ord. No. 2000-29, § 12, 12-4-2000)

Sec. 38-170. Erosion and stormwater measures.

Erosion control measures shall be implemented prior to commencement of any work. The user shall comply with stormwater management erosion control that complies with the city, state and federal laws, regulations, and guidelines. Requirements may include, but shall not be limited to, silt fencing around any excavation that will be left overnight, silt fencing in erosion areas until reasonable vegetation is established and barricade fencing around open holes. High erosion areas shall require wire-backed silt fencing.

(Code 1993, § 66-177; Ord. No. 2000-29, § 13, 12-4-2000)

Sec. 38-171. Placement of facilities.

All facilities constructed or installed on or after the effective date of the ordinance from which this article is derived shall be buried underground where possible. Except as otherwise provided in this article, all facilities constructed or installed above ground shall be approved by the city. Pedestals, junction boxes, metering facilities and similar appurtenances may be placed above ground. Users shall not place facilities within public rights-of-way in such a manner as to unreasonably interfere with existing electrical, cable, or telecommunications fixtures, water hydrants or mains, or drainage or sanitary sewer facilities, and all such facilities shall be placed in such manner as not to interfere with usual travel or public and/or city use of the public rights-of-way. The city shall have the right to direct the location of facilities in the

public rights-of-way. The installation, repair, construction, maintenance, and replacement of facilities in the rights-of-way shall be subject to inspection and approval by the city. Users shall cooperate fully with the city in conducting inspections. Users shall promptly perform remedial action required by the city pursuant to such inspection.

(Code 1993, § 66-178; Ord. No. 2000-29, § 14, 12-4-2000)

Sec. 38-172. Line location and identification.

Users shall be responsible for obtaining line locations from the state on-call system, the city, and all affected utilities and others with facilities in public right-of-way, prior to any excavation. Use of the geographic information system or plans of record shall not satisfy this requirement. The user shall be responsible for verifying the location, both horizontal and vertical, of all facilities. When required by the director of public works, a user shall verify locations of potential conflicts with existing facilities by pot holing, hand digging, or other similar method, prior to any excavation or boring. Placement of all manholes and/or hand holes must be approved in advance by the director of public works. Hand holes or manholes shall not be located in sidewalks unless approved by the director of public works. Location flags shall not be removed while facilities are being constructed. All location flags shall be removed during the cleanup process by the user at completion of the work. The user, or his agent, contractor, or subcontractor, shall notify the director of public works immediately of any damage to other utilities.

(Code 1993, § 66-179; Ord. No. 2000-29, § 15, 12-4-2000)

Sec. 38-173. Planning for capital improvement projects.

Users shall apprise the city of existing and planned construction, maintenance, and other activities of the user within public rights-of-way. Except for emergencies, users shall coordinate all installations and construction within the public rights-of-way with the city's capital improvement programs. Within 60 days following adoption of each annual fiscal year budget, the city shall forward, in writing, a list of the improvement projects including street widening, street overlay, bridge improvement, new street construction, drainage and utility improvement, and park improvement projects, which are included in the adopted budget. Within 60 days following receipt of the city's list of improvement projects for the subsequent fiscal year, each user shall provide a written report to the city identifying and describing generally the existing facilities that are within or cross through the boundaries of each project identified by the city. The city and the user shall provide to each other the names of their respective designated officials who will serve as representatives for coordination of the exchange of information and planning on any such project. Users shall field locate their facilities, and identify same with surface markings, within 15 working days following the city's request therefor.

(Code 1993, § 66-180; Ord. No. 2000-29, § 16, 12-4-2000)

Sec. 38-174. Guarantee of performance.

(a) *Filing of user with the city.* Except as provided in section 38-167, each user, at the time of submission of its initial and each renewal registration application, shall file with the city a guarantee of performance of the user's obligations hereunder, whether to be performed by the user or any other person on behalf of the user, to complete the installation of its facilities within the public rights-of-way, in accordance with the permits and approved plans and specifications therefor. Such guarantee shall be payable to the city, in the amount as currently established or as hereafter adopted by resolution of the city council from time to time; provided, however, in the event a user applies for a permit for work in which the estimated cost of restoration will exceed such amount, such user shall file a supplemental guarantee for such additional reconstruction costs. Such guarantee may take the form of a bond, an irrevocable letter of credit, or a statement of fiscal responsibility, as set forth below:

(1) *Bonds.* A corporate surety bond issued by a corporate surety authorized to do business in the state. The bond shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be canceled by the surety, nor may any intention not to renew be exercised by the surety until 60 days after receipt by the city, by registered or certified mail or written notice, of such intent to cancel or to not renew." The rights reserved to the city with respect to the bond are in addition to all other rights of the city and no action, proceeding, or exercise of a right with respect to such bond shall affect any other rights of the city.

(2) *Letters of credit.* An irrevocable letter of credit, in a form satisfactory to the city manager and the city attorney. The letter of credit shall be issued by a federally insured commercial lending institution with a credit rating of BAA or BBB+ or higher. The federally insured commercial institution on which the irrevocable letter of credit is to be drawn shall be acceptable to the city. The irrevocable letter of credit shall contain the following endorsement: "At least 60 days' prior written notice shall be given to the city manager by the financial institution of any intention to cancel, replace, fail to renew, or materially alter this irrevocable letter of credit. Such notice shall be given by certified mail to the city manager and city attorney. The city of Tomball may draw upon this irrevocable letter of credit by presentation of a draft at sight, accompanied by a written certificate signed by the city manager of the city, certifying that _____ (user) has failed to comply with provisions of ordinances applicable to _____ (user's) use of public rights-of-way within the city of Tomball."

a. After providing a user with 30 days' advance written notice of any amount due and owing, and the user's failure to pay such amounts, the city may draw upon the irrevocable letter of credit by presentation of a draft at sight, on the lending institution, accompanied by a written certificate signed by the city manager certifying that the user has failed to comply with the provisions of this article.

b. The user shall structure the irrevocable letter of credit in such a manner that if the city draws upon the irrevocable letter of credit and reduces the amount of available credit to an amount below the required guarantee, the user shall replenish the irrevocable letter of credit to the minimum within five calendar days after the available credit is reduced to an amount below the required guarantee. The intent of this section is to ensure that the credit available to the city shall at no time fall below the required guarantee.

(3) *Statement of fiscal responsibility.* Written evidence, in the form of its most recent audited financial statement, showing assets or reserves sufficient to cover the amount of the guarantee required by this section. If the user's assets or reserves are no longer adequate to comply with the amounts required by this section, the user shall immediately notify the city and shall obtain a bond or letter of credit as set forth in subsections (a)(1) and (2) of this section.

(b) *Reservation of rights to city.* The rights reserved to the city with respect to the financial guarantees provided for in this section are in addition to all other rights of the city, whether reserved by this article or otherwise authorized by law, and no action, proceeding, or right with respect to the guarantee shall affect any other right the city has or may have.

(Code 1993, § 66-181; Ord. No. 2000-29, § 17, 12-4-2000)

Sec. 38-175. Insurance and indemnity.

(a) *Insurance.* A user shall procure and maintain insurance in full force and effect at all times while its facilities are located in the public rights-of-way. The insurance shall cover all risks associated with the use and occupancy of such rights-of-way. Coverages shall be on an occurrence basis. The insurance requirements applicable to a user under this section shall be applicable to all persons performing work within public rights-of-way on behalf of such user, unless such person is covered, or named as an additional insured, under the policies of insurance supplied by the user pursuant to this section. If any person other than a user is required to provide such insurance, the provisions referring to a user in this section shall be construed to mean such person.

(1) *Risks and limits of liability.* The insurance, at a minimum, must include the coverages and limits of liability as currently established or as hereafter adopted by resolution of the city council from time to time.

(2) *Form of policies.* The insurance may be in one or more policies of insurance, the form of which must be approved by the state insurance commission.

(3) *Issuers of policies.* The issuer of any policy shall be authorized to transact insurance business in the state.

(4) *Insured parties.* Each policy shall name the user and the city (and the officers, agents and employees of the city) as insured parties.

(5) *Deductibles.* The user shall assume and bear any claims or losses to the extent of any deductible amounts and waives any claims it may ever have for the deductible amounts against the city, its officers, agents or employees.

(6) *Cancellation.* Each policy shall expressly state that it may not be canceled or nonrenewed unless 30 days' advance notice of cancellation or nonrenewal is given in writing to the city.

(7) *Subrogation.* Each policy shall contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the city, its officers, agents or employees.

(8) *Liability for premium.* If any of the policies referred to in subsection (a)(1) through (7) of this section do not have a flat premium rate, and such premium has not been paid in full, such policy shall have a rider or other appropriate certificate or waiver sufficient to establish that the issuer is entitled to look only to the user for any further premium payment and has no right to recover any premiums from the city.

(9) *"Other insurance" clause.* The insurance policies shall provide that the "other insurance" clause does not apply to the city where the city is shown on the policy as an additional insured.

(10) *Delivery of policies.* The originals of all policies referred to in subsection (a)(1) through (9) of this section, or copies thereof certified by the agent or attorney-in-fact issuing them, together with written proof that the premiums have been paid, shall be deposited by the user with the city secretary prior to commencement of any work. Failure on the part of the user to furnish a new policy or certified copy thereof before the expiration date of any such policy, or failure to obtain a new policy before the date fixed for the cancellation of an existing policy, so that the insurance referred to shall be continuously in effect, shall constitute a violation of this section.

(11) *Liability of user.* The city's approval, disapproval, or failure to act regarding any insurance supplied by a user shall not relieve such person from full responsibility or liability for damages and accidents arising out of use or occupancy of public right-of-way. Neither bankruptcy, insolvency nor denial of liability by the insurance company shall exonerate the user from liability.

(12) *Self-insurance.* A user may elect to self-insure to provide the insurance coverage required by this section, subject to the restrictions set forth in this subsection, provided the user submits to the city copies of its certificates of self-insurance from the state department of insurance, and its most recent audited financial statements showing self-insurance reserves or other assets sufficient to pay judgments equal to the limits set forth in subsections (a)(1) through (11) of this section. A user shall also provide to the city documentation evidencing its process for reviewing and paying claims. The city shall be protected by a user's self-insurance to the same extent as an additional insured on a policy issued by an insurance company. If a user's self-insurance program ceases, or a user's assets or reserves are no longer sufficient to comply with the subsections (a)(1) through (11) of this section of the coverage requirements, the user shall immediately notify the city of such lapse of coverage, and the user shall obtain commercial insurance, in accordance with the requirements in subsections (a)(1) through (11) of this section, within 30 days following such notice.

(b) *Indemnity.* To the extent permitted by law, each user, and each person performing work within a public right-of-way as a contractor on behalf of a user, shall indemnify and hold the city harmless as

set forth in subsections (a)(1) through (5) of this section. If any person other than a user is required to provide such indemnity, the provisions referring to a user in this subsection shall be construed to mean such person. The user shall promptly defend, indemnify, and hold the city harmless from and against all damages, costs, losses, or expenses:

(1) For the repair, replacement, or restoration of city's property, equipment, materials, structures, and facilities which are damaged, destroyed, or found to be defective solely as a result of the user's acts or omissions.

(2) From and against any and all claims, demands, suits, causes of action, and judgments for:

a. Damage to or loss of the property of any person (including, but not limited to, the user, its agents, officers, employees, and subcontractors, and the city, its agents, officers, and employees, and third parties); and/or

b. Death, bodily injury, illness, disease, loss of services, or loss of income or wages to any person (including, but not limited to, the officers, agents, and employees of the user, the user's contractors, and the city's officers, agents, and employees, and third parties), arising out of, incident to, concerning, or resulting from, the negligent or willful acts or omissions of the user, its officers, agents, employees, and/or subcontractors, in the performance of activities pursuant to this article.

(3) This indemnity provision is intended to include liability arising from the city's alleged negligence, but only to the extent such liability arises out of a claim or claims that the city was negligent in authorizing the user to use or occupy the public rights-of-way, in regulating the conduct of the user, or in failing to prevent the user from acting in a negligent or wrongful manner.

(4) For purposes of this indemnification provision, acts or omissions of the officer, agents, employees and contractors of the user shall be considered the acts and omissions of the user.

(5) The indemnity provision set forth in this subsection (b) is solely for the benefit of the city and the user and is not intended to create or grant any rights, contractual or otherwise, to any other person.

(Code 1993, § 66-182; Ord. No. 2000-29, § 18, 12-4-2000)

Sec. 38-176. Revocation or denial of construction permits.

If any provision of this article is not followed, a permit for the construction of facilities may be revoked. If a person has not followed the terms and conditions of this article with respect to work done pursuant to a prior permit, new permits may be denied or additional terms may be required.

(Code 1993, § 66-183; Ord. No. 2000-29, § 19, 12-4-2000)

Sec. 38-177. Appeal from denial or revocation of permit.

Appeals from denials or revocations of permits shall be to the city council. Appeals shall be filed with the city secretary within 15 days from the date of the denial or revocation. A hearing shall be held within 30 days of the date the appeal is filed with the city secretary.

(Code 1993, § 66-184; Ord. No. 2000-29, § 20, 12-4-2000)

Sec. 38-178. Conflicts with existing franchises.

In the event of conflict between the provisions of this article and any franchise or other written authorization heretofore approved by city, the provisions of this article shall control.

(Code 1993, § 66-185; Ord. No. 2000-29, § 21, 12-4-2000)

Sec. 38-179. Notice.

Any notice required to be given to the city under this article shall be given in writing, and may be effected by:

(1) Personal delivery if delivered to the director of public works or his designee;

(2) By facsimile or electronic mail, if delivered to the director of public works or his designee and to the city secretary; or

(3) By United States mail, postage prepaid, registered or certified, return receipt requested, addressed to the director of public works or his designee and the city secretary.

No notice shall be deemed given until actual receipt by the city as hereinabove set forth.

(Code 1993, § 66-186; Ord. No. 2000-29, § 22, 12-4-2000)

Sec. 38-180. Penalties/remedies.

(a) *Criminal penalty.* Any person who shall violate any provision of this article shall be deemed guilty of a misdemeanor. Prosecution for, and imposition of, criminal penalties under this section shall not bar the city from seeking other additional remedies as may be provided in this article, by law, or in equity.

(b) *Civil penalties.* Civil penalties may be imposed for violation of any provision of this article, as follows:

(1) Up to $1,000.00 for each violation, and each day of a continuing violation may be considered a new violation; and/or

(2) Revocation of any or all permits granted to allow work in public rights-of-way, subject to procedural guidelines provided in this article, any agreement which applies to the person subject to the complaint, and subject to any limitation imposed by federal or state law.

(Code 1993, § 66-187; Ord. No. 2000-29, § 23, 12-4-2000)

Secs. 38-181—38-198. Reserved.

ARTICLE VII. USE OF RIGHTS-OF-WAY BY PROVIDERS OF TELECOMMUNICATIONS SERVICES [2]

Sec. 38-199. Purpose.

Sec. 38-200. Definitions.

Sec. 38-201. Unauthorized use of public rights-of-way.

Sec. 38-202. Public rights-of-way use license.

Sec. 38-203. Compensation; books and records.

Sec. 38-204. Indemnification and insurance.

Sec. 38-205. Default and termination.

Sec. 38-206. Transfer of authority.

Sec. 38-207. Miscellaneous provisions.

Sec. 38-199. Purpose.

(a) *Protection of rights-of-way; neutrality.* The purpose of this article is to establish a competitively neutral policy for the use, by telecommunications providers, of the city's public rights-of-way, and to enable the city to:

(1) Minimize congestion, inconvenience, visual impact, costs, and other adverse effects which would likely result from the unregulated placement of telecommunications facilities within public rights-of-way;

(2) Require, to the extent permitted by law, that telecommunications providers pay fair and reasonable compensation for the use of public rights-of-way;

(3) Promote competition among telecommunications providers and encourage the universal availability of telecommunications services to all residents and businesses of the city;

(4) Conserve the limited physical capacity of such public rights-of-way held in public trust by the city;

(5) Ensure that telecommunications providers having facilities within the city comply with applicable ordinances, rules, and regulations of the city; and

(6) Ensure that the city fairly and responsibly preserves and protects public health, safety, and general welfare.

(b) *Services not regulated.* It is not the policy or intention of this article to prohibit, regulate, license, or franchise the provision of any service within the city, and no provision of this article shall be so construed; any term or condition contained in this article, or in any license ordinance adopted pursuant to this article, shall relate to the rights of a person to make use of the public rights-of-way, not in limitation of any right granted by the state public utility commission, the federal communications commission, or their successors.

(c) *Existing franchise rights preserved.* This article shall not apply to a telecommunications provider operating within the city on the effective date of the ordinance from which this article is derived pursuant to a valid existing franchise ordinance; provided, however, upon the termination of any such franchise the telecommunications provider to which it applies shall be subject to the provisions of this article in the same manner as any other telecommunications provider. Notwithstanding the foregoing, any telecommunications provider operating within the city on the effective date of the ordinance from which this article is derived pursuant to a valid franchise ordinance may, at such provider's option, apply for the issuance of a license under this article and the early termination of such franchise. Such franchise shall be deemed terminated upon the effective date of such license. Nothing in this article shall be construed to diminish the right or ability of the city to require any other user of public rights-of-way to secure appropriate city authorization, including, without limitation, cable service providers.

(Code 1993, § 76-26; Ord. No. 99-11, § 2, 9-20-1999)

Sec. 38-200. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Access line means a unit of measurement representing:

(1) Each switched transmission path of the transmission media that is physically within the public right-of-way extended to the end-user customer's premises within the city that allows delivery of local exchange telephone services within the city that is provided by means of owned facilities, unbundled network elements or leased facilities, or resale;

(2) Each termination point or points of a nonswitched telephone or other circuit consisting of transmission media located within the public right-of-way connecting specific locations identified

by, and provided to, the end-user for delivery of nonswitched telecommunications services within the city; or

(3) Each loop provided as an unbundled network element to a person pursuant to an agreement under section 252 of the Federal Telecommunications Act of 1996, used for the provision of telecommunication services. The term "access line" shall not be construed to include interoffice transport or other transmission media that do not terminate at an end-user customer's premises, or to permit duplicate or multiple assessment of access line rates upon the provision of a single service.

Applicant means a person who files an application with the city, pursuant to section 38-202, to obtain a license to use or place network facilities within the city's public rights-of-way, whether by means of the person's own facilities or by purchase or lease of one or more network facilities from another provider of telecommunications services.

Cable Act means the Cable Communications Policy Act of 1984, 47 USC 532 et seq., as amended.

Cable operator means a person providing or offering to provide cable service within the city as that term is defined in the Cable Act.

Cable service shall have the same meaning provided by the Cable Act.

City property means all real property owned by the city, other than public rights-of-way and all other properties held in a proprietary capacity by the city, which are not subject to right-of-way licensing as provided in this article.

Federal Communication Commission or *FCC* means the federal agency or its successor agency that is the regulatory authority over telecommunications providers.

Licensee means a telecommunications provider that has been issued a license pursuant to a license ordinance.

License fee means the compensation payable to the city by a licensee for the use and occupancy of public rights-of-way.

License ordinance means an ordinance adopted pursuant to this article which grants to a telecommunications provider the authority and license to place, operate, and utilize its network facilities within the public rights-of-way of the city for the purpose of providing telecommunications services.

Network facilities means conduits, ducts, manholes, vaults, tanks, towers, wave guides, optic fiber, microwave dishes, transmitters, antennas and antenna structures, radio equipment, and any associated converters, electrical lines, communications lines, transmission lines, cables, wires, amplifiers, switches, utility equipment, or other such object, device, facility, or appurtenance, including attachments and encasements therefor, whether underground or overhead, which are designed, installed and constructed within the public rights-of-way for the purpose of producing, receiving, amplifying, switching, transmitting, or distributing communication signals, whether analog or digital, whether for voice, data, or other purposes, and whether by or through wired or wireless systems, to or from customers, subscribers or locations within the corporate limits of the city. The term "network facilities" shall not include airwaves above a right-of-way. The term "network facilities" shall not include such facilities to the extent that they are solely used to provide cable services.

Public rights-of-way means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, easement, or similar property in which the city holds a property interest (fee title, easement or otherwise) or over which the city exercises any rights of management or control, and which, consistent with the purposes for which it was acquired or dedicated, may be used for the installation and maintenance of network facilities. The term "public rights-of-way" shall not include the airwaves above a public right-of-way with regard to wireless telecommunications services.

Public Utility Commission of Texas or *PUC* means the state agency having jurisdiction over telecommunications providers.

Telecommunications means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the content of the information as sent and received.

Telecommunications provider or *provider* means a person who offers telecommunications services to customers through network facilities located in the public rights-of-way.

Telecommunications services means the provision of telecommunications provided through network facilities, excluding cable services, but which include, without limitation:

(1) Access lines provided to end users or to other telecommunications companies for the purpose of voice, data, or noncable video transmission;

(2) Nonswitched telephone circuits consisting of transmission media connecting specific locations identified by, and provided to, the end-user for delivery of nonswitched services within the city;

(3) Switched access lines for the distribution of voice, data, and noncable video transmission; and

(4) Any other telecommunication services authorized by state or federal law.

Wired telecommunications service means telecommunications services provided through network facilities which transmit and receive sounds, pictures, or signals of any kind by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, and includes both one-way and two-way services.

Wireless telecommunications service means telecommunications services provided through network facilities which transmit and receive sounds, pictures, or signals of any kind by radio or microwave signals between the points of origin and reception of such transmission, and includes both one-way and two-way services.

(Code 1993, § 76-27; Ord. No. 99-11, § 3, 9-20-1999)

Sec. 38-201. Unauthorized use of public rights-of-way.

(a) *Authorization to use public rights-of-way required.* It shall be unlawful for any person to lay, construct, operate, offer for lease, or make available for any use whatsoever any network facility across, along, over, above, or under any public right-of-way within the limits of the city, for any private or commercial purpose, unless the right to do so has been granted to such person pursuant to a license ordinance adopted by city council in accordance with this article.

(b) *Liability for fees.* Without limitation of other remedies available to the city, persons making use of the public rights-of-way of the city in violation of this article, or otherwise without valid consent of the city, shall be liable for all fees authorized by this article effective as of the date of inception of such use.

(Code 1993, § 76-28; Ord. No. 99-11, § 4, 9-20-1999)

Sec. 38-202. Public rights-of-way use license.

(a) *Application required; contents.* Any person proposing to place network facilities within public rights-of-way shall submit an application to the city. Applications may be filed in the office of the city secretary. An application shall describe in general terms all services the applicant will offer or provide, and shall outline the applicant's proposed network facilities, including a description of the physical characteristics of the network facilities proposed to be installed in the public rights-of-way. The city council may require the following information:

(1) The identity of the applicant and all affiliates of the applicant which may use in any manner the network facilities to provide telecommunications services within the city;

(2) A general description of the principal transmission medium that will be used by the applicant to offer or provide such telecommunications services;

(3) Preliminary engineering plans, specifications, and a network map of planned or projected new network facilities to be located within the city, all in sufficient detail to identify:

a. The location and route requested for the applicant's proposed network facilities;

b. The location of all known overhead and underground public utility, telecommunications, cable, water, sewer, drainage and other facilities in the public rights-of-way along the proposed route; and

c. The specific trees, structures, improvements, facilities, or obstructions, if any that the applicant proposes to temporarily or permanently remove or relocate;

(4) If the applicant is proposing to install overhead facilities, evidence that surplus space is available, and, if existing utility poles are to be utilized, evidence that their use is authorized;

(5) If the applicant is proposing to install underground network facilities, evidence of whether surplus duct or conduit space is available, and, if existing ducts or conduits are to be utilized, evidence that their use is authorized;

(6) A preliminary construction schedule and completion dates;

(7) A preliminary traffic control plan;

(8) Information to establish that the applicant will obtain all other governmental approvals and permits prior to construction and operation of the network facilities and prior to offering or providing the telecommunications services;

(9) Whether the applicant intends to provide cable service or other video programming service, such as an open video system, as defined in the Cable Act, together with sufficient information to determine whether such service is subject to cable franchising under the Cable Act;

(10) A narrative description of applicant's existing network facilities in the city that the applicant intends to use or lease;

(11) The area of the city the applicant desires to serve and a schedule for build-out to the entire city, if any; and

(12) Such other and further information relating to the use of the public rights-of-way that may be reasonably requested by the city council.

(b) *Standards for approval.* In making its determinations regarding adoption of license ordinances, the city council shall consider the legal authority of the subject applicant to provide telecommunications services within the city, with due regard for applicable federal and state telecommunications laws, regulations, and policies.

(c) *License ordinance.* License ordinances adopted by the city council shall be deemed to incorporate all provisions of this article. A license ordinance shall be deemed as authorization for the applicable licensee to use the public rights-of-way for the provision of telecommunications services. No network facility shall be located, or made use of, in any public right-of-way in a manner inconsistent with the provisions of this article and/or the license ordinance. No license ordinance shall be construed to grant access to city property, unless specifically included therein. No licensee shall use a public right-of-way or allow any other person to use licensee's network facilities in a public right-of-way, except as provided in the applicable license ordinance. Notwithstanding the foregoing, a license ordinance shall not be required for a person engaging solely in the resale of a licensee's services or the provision of services by unbundled network elements obtained from a licensee, provided that the applicable license ordinance authorizes the network facilities involved and the person does not own or operate any network facilities in the public rights-of-way.

(d) *Conditions of license.* The issuance of any license pursuant to this section shall be subject to the following additional standards:

(1) *Interference with public use prohibited.* All licensees shall lay, construct, erect, operate, lease, maintain, repair, and replace their network facilities in such a manner as to not unreasonably

interfere with the use of public rights-of-way, public streets and sidewalks, or other public or private ways.

(2) *Compliance with law.* Licensees are explicitly subject to the police powers of the city and the city's rights as a property owner under state and federal laws. All work done by licensees in connection with the construction, expansion, reconstruction, maintenance, or repair of its network facilities in public rights-of-way shall be subject to and governed by all applicable federal, state, and city rules, regulations, laws, and ordinances. The provisions of this subsection shall apply to all licensees and to any other person owning, operating, or in control of network facilities located within public rights-of-way.

(3) *Construction regulations.*

a. *Excavations.* All excavations and other construction in the public rights-of-way shall be performed in accordance with all applicable state, federal, and city regulations.

b. *Interference with use of property.* All construction within public rights-of-way shall be undertaken so as to minimize interference with the use of public and private property and in accordance with any lawful direction given by the city under the police and regulatory powers of the city.

c. *Construction permits.* Before commencing any work which involves the construction, installation, expansion, repair, removal, or maintenance of network facilities within a public right-of-way, a licensee shall apply for and obtain a construction permit therefor. Provided, however, acquisition of construction permits shall not be required for any such work which does not involve the alteration or disturbance of the surface of the right-of-way. Each permit application shall include a written work description, including construction drawings, showing the network facilities' location (or proposed location) and the estimated depth of the network facilities (existing and proposed) in the immediate area of the proposed new construction. Such drawings shall be reviewed by the city engineer and, if disapproved, returned with comments setting forth the reasons for such disapproval. Approvals shall not be unreasonably withheld or delayed. Except as otherwise specifically provided in this section, licensees shall not commence any such work until applicable construction permits have been approved therefor. Upon completion of any such work, the licensee shall promptly restore the surface of the affected public right-of-way to a condition which equals or exceeds its condition prior to such construction. To such end, the licensee shall replace excavated areas with the same type of materials as those removed, unless alternate equivalent materials are approved by the city. Any excavated areas showing depressions within one year following such work shall be restored by the licensee. Licensees may excavate public rights-of-way only for the purpose of, and to the extent reasonably required for, the construction, installation, expansion, repair, removal, or maintenance of its network facilities. Review and approval by the city of construction permits as provided in this section shall not constitute any representation or warranty regarding the sufficiency of design or construction of the network facilities.

d. *Emergency repairs; restoration of service.* Notwithstanding the foregoing subsection (d)(3)c of this section, during emergency situations where, in the good faith judgment of a licensee, failure to act immediately could jeopardize public health, safety, or general welfare, or in situations where a repair is necessary to restore service to a customer, licensees may perform repairs to facilities within public rights-of-way which involve the alteration or disturbance of the surface of such public right-of-way, without prior notification to the city. In such cases, the licensee shall notify the director of public works for the city by the close of business on the next business day, stating the nature of such repairs and, if not completed, the length of time estimated to complete same. The licensee shall apply for the required approvals as soon as reasonably practicable, and any work performed that is not consistent with then-applicable city standards shall be corrected upon notice thereof from the city.

e. *Routine maintenance.* Routine maintenance on network facilities located within public rights-of-way shall be conducted in a manner that is consistent with then-applicable city regulations governing such work, if any.

f. *Obstructions of traffic.* Any obstruction of vehicular or pedestrian traffic resulting from construction or repair activities of a licensee, other than for emergency repairs, shall require prior notification to the director of public works. Any such work shall be performed in a manner calculated to cause the least inconvenience to the city and the public as is reasonably possible under the circumstances. When a licensee performs or causes to be performed any work over or across a public street or sidewalk, or so closely adjacent thereto as to create hazards for the public or itself, the licensee shall provide construction and maintenance signs and sufficient barricades and flag men at such sites as are reasonably necessary to protect the public and the licensee's equipment and workers. The application of such traffic control devices shall be consistent with the standards and provisions of the latest addition of the Texas Manual on Uniform Traffic Control Devices. Appropriate warning lights shall be used at all construction and maintenance zones where one or more traffic lanes are being obstructed during nighttime conditions.

g. *Closing of streets.* If a licensee's work requires the obstruction of any street for a period longer than 30 minutes, the closure shall be performed in a manner approved by the director of public works. The licensee shall not wholly close any public street, but shall at all times maintain a route of travel along and within any roadway that is within a public right-of-way; provided that, in cases of an emergency, the director of public works may authorize the temporary closing of a public street or sidewalk to allow the licensee to complete such emergency repairs if, in the opinion of the director of public works, such closing is necessary to protect the safety of the general public.

h. *Construction drawings.* Within 120 days following completion of each segment of its network facilities, or within 120 days following any material alteration or modification thereto, each licensee shall supply the city with a complete set of construction drawings for that segment, or for the material alteration or modification thereof, unless the licensee certifies to the city, in writing, that such construction was completed in accordance with the construction plans filed pursuant to subsection (d)(3)c of this section, in which case such construction plans shall be marked accordingly by the city and filed as the permanent construction drawings. For the purposes of this section, a material alteration or modification of a network facility shall be deemed to have occurred if such alteration or modification would render the existing construction drawings inaccurate and/or misleading regarding the location of a structural component thereof. Such drawings shall be of sufficient detail to allow the city to determine the location of the licensee's network facilities with reasonable accuracy. In lieu of print documents, a licensee may, upon advance reasonable request, provide such drawings and maps by other mediums, including electronic mediums, provided the city has the capability to access such information.

(4) *Conservation of public rights-of-way.* To the extent the city may be authorized by state or federal law to do so, and to the extent reasonable under the circumstances then existing, the city may require a licensee to attach portions of his facilities to other facilities within the public rights-of-way owned and maintained by other persons. A licensee shall not be required to attach its facilities to the facilities of such other persons if it is shown that such licensee would be subjected thereby to increased risks of interruption to its service, to increased liability for accidents, or to unreasonable delays in construction or availability of service, or if the facilities of such other person are not of the character, design, or construction required by, or are not being maintained in accordance with, current practice, or are not available to the licensee on reasonable terms, including, without limitation, reasonable fees. Insofar as is practical to do so, licensees shall use existing network facilities in the provision of their services; provided, however, nothing contained in this section shall be construed as limiting a telecommunications provider from expanding its facilities to accommodate future growth and development. Licensees shall provide information to the city relating to the location and/or operation of their network facilities or services as may be reasonably necessary for municipal planning purposes.

(5) *Relocation or removal of facilities.* A licensee may be required to lower, place underground, relocate, or remove any network facility within any public right-of-way, without cost to the city, if reasonably necessary, as determined by the city council, to abate a condition actually or potentially dangerous to public health or safety, or as may be reasonably necessary to accommodate the construction, repair, maintenance, removal, or installation of any city or other governmental entity's publicly funded project within the city in, upon, or under public rights-of-way, including, without limitation, street construction and widening, water, sanitary sewer, storm drains, street lights, and traffic signal conduits, or any other public facilities in, upon, or under the public rights-of-way. In the alternative, where the city council determines it to be feasible, a licensee may be allowed to pay the additional costs incurred for the design and/or construction of any such public works project in a manner that would avoid the necessity of relocation or removal of the network facilities. A licensee shall be provided the opportunity to collaborate in advance with the city and/or propose alternatives in order to minimize cost, better schedule the work, and accommodate suitable refinements and/or joint work with others. In the event of any such requirement for lowering, placing underground, relocating, or removing network facilities as provided in this section, the licensee shall complete same as soon as is reasonably practicable following written notice thereof by the city.

(6) *Timely completion.* If a licensee fails to either:

a. Commence or thereafter diligently prosecute any repair, refilling, lowering, relocation, removal, or other work required by the city; or

b. Diligently complete any work that disturbs a public right-of-way, the city may cause the work to be done or completed at the expense of the licensee and may recover all such expense from the licensee, together with all costs and reasonable attorneys' fees.

Notwithstanding the foregoing, a licensee shall be entitled to notice and opportunity to cure during the cure period described and set forth in section 38-205(b), and shall not be liable for any costs under this section unless such licensee fails to timely complete during such cure period.

(7) *Abandonment of obsolete network facilities.* Licensees shall remove network facilities when such network facilities are obsolete, are no longer in service, and either create visual blight or create a nuisance to the public; provided, however, a licensee shall not be required to remove any network facility for which renovation or restoration is planned by a licensee, and which renovation or restoration is completed within a reasonable period of time following abandonment. Provided further, no network facility, or any material portion thereof, which is being utilized for telecommunications services shall be deemed to be abandoned. When permanent structures in public rights-of-way are removed or abandoned, the city shall be notified in writing of such removal or abandonment. The director of public works may direct such remedial measures as the director may determine are necessary for public safety and the integrity of public rights-of-way.

(8) *Bonding.* A licensee shall comply with all applicable regulations of the city relating to the provision of bonds or other security which may be required in connection with work in public rights-of-way.

(9) *Temporary rearrangement of aerial wires and cables.* Upon request, a licensee shall remove or raise or lower its aerial network facilities temporarily to permit the moving of houses or other bulky structures. The expense of such temporary rearrangements shall be paid by the party requesting same, excluding requests by the city. The licensee may require payment in advance. The licensee shall be given a reasonable amount of advance notice to provide for such rearrangement, but in no event shall such notice be required to exceed 30 days.

(10) *Tree trimming.* A licensee is authorized to trim trees upon and overhanging public rights-of-way to the extent reasonably necessary to prevent the branches thereof from coming in contact with the licensee's network facilities. At the option of the city, a licensee may be required to conduct

tree trimming under the supervision and direction of the city through the city official to whom such duty has been or may be delegated.

(11) *Term.* The term of each license granted pursuant to this section shall be as set forth in the license ordinance, but shall not exceed one year.

(Code 1993, § 76-29; Ord. No. 99-11, § 5, 9-20-1999; Ord. No. 99-34, § 1, 11-15-1999)

Sec. 38-203. Compensation; books and records.

(a) *License fees for providers of wired telecommunications services.* Licensees using public rights-of-way for the provision of wired telecommunications services shall pay to the city a license fee that is calculated by applying a monthly charge for each access line owned, placed, operated, controlled or maintained by the licensee, during the month to which the license fee applies, for use by an end-user or for another provider that uses the licensee's services or network facilities for the provision of telecommunications services within the city. With regard to persons leasing, reselling, or otherwise using licensee's access lines, if the licensee does not have sufficient information to determine the appropriate access line type, and, thus, the appropriate fee rate to apply, then the higher line fee shall apply until such time as the person using the access lines provides to the licensee sufficient written information to determine the correct line fee. Notwithstanding the foregoing, a licensee shall not be liable for underpayment of license fees resulting from the licensee's reliance upon the written information provided by any such person using licensee's service or facilities for the provision of telecommunications services to end-user customers. The license fee payable to the city shall be the sum total of the monthly charges to be applied to access lines, on a calendar month basis, as follows:

(1) *The monthly charge per access line.* The monthly charge, per access line, is $2.10.

(2) *Payment due dates; calculation report; access lines.* License fees shall be paid quarterly, with such payments due and payable on or before the 45th day following the end of the calendar quarter for which such payments apply. With every quarterly remittance, each licensee shall file a written report showing the number and type of access lines owned or placed and maintained by the licensee within the city that are activated for end-user customers and other telecommunications providers at month's end, for each of the three calendar months to which such remittance applies. Such report shall specifically identify access lines owned, placed, operated, controlled, or maintained by the licensee that are leased and/or used by persons who are not end-user customers. Such report shall show the number of access lines by category, to the extent known. The report shall be used solely for the purpose of verifying the number of the licensee's access lines serving premises within the city.

(3) *Exclusions for certain economically disadvantaged customers.* Lines terminating at customers' premises that are billed as "lifeline," "tel-assistance," or other services similarly discounted for the purpose of advancing universal service to the economically disadvantaged, shall not be included in the count of access lines for which the license fee is calculated.

(4) *Leased network facilities.* Notwithstanding any other provision contained in this article to the contrary, a licensee shall not be required to include in its monthly count of, and shall not be required to remit a license fee to the city based on, access lines that are resold, leased, or otherwise provided to another person if the other person has furnished licensee with adequate proof that the person will remit directly to the city a license fee based on those leased access lines.

(b) *License fees for providers of wireless telecommunications services.* Licensees using public rights-of-way for the provision of wireless telecommunications services shall pay to the city a license fee that is calculated by applying a monthly charge calculated in accordance with one of the following methods:

(1) *Per subscriber/customer method.* Licensees may elect to pay a license fee that is calculated by applying a monthly charge for each subscriber/customer within the city that uses the licensee's

services or network facilities for the provision of telecommunications services. A monthly charge shall be applied for each subscriber/customer having a billing address within the city. The license fee payable to the city shall be the sum total of the monthly charges to be applied to each subscriber/customer, on a calendar month basis, as follows:

Monthly fee (per subscriber/customer): $2.10.

(2) *Gross revenue method.* If the license fee provided for in subsection (b)(1) of this section would result in a fee which exceeds four percent of the applicable licensee's gross revenues from subscribers/customers within the city, such licensee may pay a license fee which equals four percent of the gross revenues received by such licensee from subscribers/customers within the city. For the purposes of this section, the term "gross revenues" means the gross dollar amounts received by the licensee for wireless telecommunications services provided to subscribers/customers with billing addresses in the city, but excluding:

a. The monthly charges collected pursuant to this section;

b. Local, state, or federal taxes collected by the licensee that have been billed to subscribers/customers and separately stated on bills therefor; and

c. Uncollectible revenues.

(3) *Facilities charge method.* A licensee providing wireless telecommunications services within the city which does not occupy more than 500 linear feet, 200 square feet, or 100 cubic feet of the public rights-of-way for the location of its network facilities may pay an annual license fee based on the actual network facilities located within such public rights-of-way. Such license fees shall be calculated in accordance with public right-of-way use fee schedules as may be adopted by resolution of the city council from time to time and in effect at the time the applicable license ordinance is adopted.

(4) *Payment due dates; calculation report.* License fees shall be paid quarterly, with such payments due and payable on or before the 45th day following the end of the calendar quarter for which such payments apply. With every quarterly remittance, each licensee shall file a written report showing the number of subscribers within the city that are served by the licensee, the gross revenues received by the licensee, or an inventory of network facilities in the city's public right-of-way, as applicable, for each of the three calendar months to which such remittance applies. Such report shall specifically identify any network facilities owned, operated, or maintained by the licensee that are leased and/or used by persons who are not end-users. Such report shall show the number of subscribers of such persons leasing or using such facilities, if any, to the extent known. The report shall be used solely for the purpose of verifying the license fee payable to the city, as provided in this section.

(5) *Exclusions for certain economically disadvantaged customers.* Subscribers that are billed as "lifeline," "tel-assistance," or for other services similarly discounted for the purpose of advancing universal service to the economically disadvantaged, shall not be included in the count of subscribers for which the license fee is calculated.

(6) *Leased network facilities.* Notwithstanding any other provision contained in this article to the contrary, a licensee shall not be required to include in its monthly count of, and shall not be required to remit a license fee to the city based on, subscribers that are served by network facilities resold, leased, or otherwise provided to another person if the other person has furnished the licensee with adequate proof that the person will remit directly to the city a license fee based on those subscribers, and the city has approved the arrangement.

(c) *License fees for providers not serving customers within the city.* Providers using network facilities within public rights-of-way, but which serve no customers within the city, other than itself, shall pay an annual license fee based on the facilities located within such public rights-of-way, which fees shall be commensurate with the fees paid by providers serving customers within the city. Such license fees shall be calculated in accordance with public right-of-way use fee schedules as may be adopted by resolution of the city council from time to time and in effect at the time the applicable license

ordinance is adopted. This fee shall be due on or before July 15 of every year during the term of the license, prorated as applicable. A report shall be submitted with each annual payment showing the calculation of the payment, including necessary descriptions of the network facilities, as applicable.

(d) *Reporting requirements.* The forms required to be filed pursuant to subsections (a)(1), (b)(1), and (c) of this section shall be accompanied by a written statement, executed by a duly authorized officer or representative of the licensee, certifying that the information contained in such report is true and correct, to the best of the officer or representative's knowledge and belief, after due inquiry. A copy of the completed forms and the accompanying certified statements shall be filed with the city secretary of the city. Such forms shall be deemed confidential to the extent permitted by law. Upon written request, licensees shall verify the information contained in such forms and, upon reasonable advance notice, all non-customer-specific records and other documents required for verification shall be subject to inspection by the city, expressly excluding any records, documents, or other writings the disclosure of which is prohibited by state or federal law.

(e) *Late payments; default.* Payments received after their due date shall incur interest at the rate of ten percent per annum, compounded daily. Notwithstanding the foregoing, failure of a licensee to make a full payment within 30 days following the due date shall constitute an event of default.

(f) *Circumvention of license fees prohibited.* Licensees shall not circumvent payment of license fees by bartering, by transferring rights, or by other means that result in undercounting the number of access lines, or subscribers, as applicable, as required in this section. Capacity or services may be bartered if the imputed access lines, or subscribers, are reported in accordance with this article.

(g) *Uncollectibles.* A licensee shall not be obligated to pay the city for any access lines or subscribers for which revenues remain uncollectible.

(h) *No release.* No acceptance by the city of any payment by a licensee shall be construed as a release of, or an accord or satisfaction of, any claim that the city might have for further or additional sums payable under the terms of this article or a license ordinance, or for any other performance or obligation of the licensee.

(i) *No other fees.* License fees paid under this section shall be in lieu of any permit, license, approval, inspection, or other similar fee or charge, including, but not limited to, all general business license fees customarily assessed by the city for the use of the public rights-of-way against persons operating businesses similar to that of the licensees. Further, such license fees shall constitute full compensation to the city for all of a licensee's network facilities located within the public rights-of-way, including interoffice transport and other transmission media that do not terminate at an end-user customer's network interface device, even though those types of network facilities are not used in the calculation of a license fee.

(j) *Records.* Licensees shall retain and maintain all records, accounts, and financial and operating reports necessary to establish compliance with the terms of this article for a period of not less than five years.

(Code 1993, § 76-30; Ord. No. 99-11, § 6, 9-20-1999)

Sec. 38-204. Indemnification and insurance.

(a) *Indemnity.* To the extent permitted by law, each licensee shall indemnify and hold the city harmless as follows:

(1) The licensee shall promptly defend, indemnify, and hold the city harmless from and against all damages, costs, losses, or expenses:

a. For the repair, replacement, or restoration of city's property, equipment, materials, structures, and facilities which are damaged, destroyed, or found to be defective solely as a result of the licensee's acts or omissions; and

b. From and against any and all claims, demands, suits, causes of action, and judgments for:

1. Damage to or loss of the property of any person (including, but not limited to, the licensee, its agents, officers, employees, and subcontractors, the city, its agents, officers, and employees, and third parties); and/or

2. Death, bodily injury, illness, disease, loss of services, or loss of income or wages to any person (including, but not limited to, the agents, officers, and employees of the licensee, licensee's subcontractors, city's officers, agents, and employees, and third parties), arising out of, incident to, concerning, or resulting from the negligent or willful acts or omissions of the licensee, its agents, employees, and/or subcontractors, in the performance of activities pursuant to this article.

(2) This indemnity provision is intended to include liability arising from the city's alleged negligence, but only to the extent such liability arises out of a claim that the city was negligent in granting the license, in regulating the conduct of the licensee under the license, or in failing to prevent licensee from acting in a negligent or wrongful manner. The indemnity provision set forth in this subsection (a) is:

a. Solely for the benefit of the city and the licensee and is not intended to create or grant any rights, contractual or otherwise, to any other person or entity;

b. To the extent permitted by law, any payments made to, or on behalf of, the city under the provisions of this section are subject to the rights granted to licensees under V.T.C.A., Utilities Code §§ 54.204—54.206; and

c. Subject to the continued applicability of the provisions of V.T.C.A., Utilities Code §§ 54.204—54.206, as set forth in subsection (a)(2)b of this section, the provisions of the indemnity shall survive the expiration of this article. If the authority granted by this article is terminated or is not renewed, and the licensee does not remove its network facilities from the public rights-of-way, the licensee shall continue to indemnify and hold harmless the city pursuant to this section as long as its facilities are located in the public rights-of-way, and for said purpose, this section shall survive the license ordinance.

(b) *Insurance.* Licensees shall procure and maintain, during the term of their licenses, the following insurance coverage, and the respective policies thereof shall cover all risks related to the licensee's use and occupancy of the public rights-of-way and all other risks associated with their license.

(1) *Description of insurance coverage and limits.*

Coverage	Limits of liability
Workers' compensation	Minimum statutory limits
Employer's liability	Bodily injury by accident $1,000,000.00 (each accident)
Bodily injury by disease	$1,000,000.00 (policy limit)
Bodily injury by disease	$1,000,000.00 (each employee)

Commercial general liability (Including broad form coverage, contractual liability, bodily and personal injury, and completed operations)	Combined single limits of $1,000,000.00 per occurrence and $1,000,000.00 aggregate
Products and completed operations	$1,000,000 aggregate
Automobile liability insurance for automobiles used by the licensee in the course of its performance under the license ordinance, including employer's non-ownership and hired auto coverage	$1,000,000.00 combined single limit per occurrence
Excess coverage	$1,000,000.00 per occurrence/combined aggregate in excess of

	limits specified for employer's liability, commercial general liability, and automobile liability

Note—Aggregate limits are for a 12-month policy period, unless otherwise indicated.

(2) *Other insurance-related requirements.*

a. The city shall be named as an additional insured, by endorsement, on all applicable insurance policies;

b. Applicable insurance policies shall each be endorsed with a waiver of subrogation in favor of the city;

c. Insurers shall have a rating of B+ or better and a financial size of class VI or better, according to the current year's Best's rating. Each insurer shall be responsible and reputable, must have financial capability consistent with the risks covered, and shall be subject to approval by the city council with regard to conformance with these requirements, which approval shall not be unreasonably withheld;

d. Deductible limits on insurance policies and/or self-insured retention exceeding $50,000.00 shall require approval by the city council;

e. Certificates of insurance shall state that the city shall be notified a minimum of 30 days prior to the insurers' action, in the event of cancellation, non-renewal, or reduction in policy limits, regarding any policy required hereby;

f. Full limits of insurance required in subsection (b)(1) of this section shall be available for claims arising out of a licensee's applicable license ordinance;

g. Certificates of insurance shall be provided by a licensee to the city prior to the installation, construction, or operation of any network facilities within public rights-of-way; provided, however, any licensee lawfully operating network facilities within public rights-of-way at the time of adoption of such licensee's applicable license ordinance shall provide such certificates of insurance within 30 days following the effective date of such license ordinance. Any failure of the city to request such documentation shall not be construed as a waiver of the insurance requirements specified in this section;

h. The city shall be entitled, upon request and without incurring expense, to review the insurance policies (or certified copies thereof), including endorsements thereto, which relate to the insurance requirements specified in this section, and, at its discretion, to require proof of payment for policy premiums;

i. The city shall not be responsible for paying the cost of insurance coverage required in this section;

j. Notice of any actual or potential claim and/or litigation that would affect insurance coverage required in this section shall be provided to the city in a timely manner. In the alternative, a policy may, by endorsement, establish a policy aggregate to establish compliance with the requirements set forth in this section;

k. Each insurance policy required in this section shall be primary insurance to any other insurance available to the city with respect to any claims arising hereunder;

l. A licensee shall either require its contractors to maintain the same insurance coverage and limits thereof as specified in this section or such coverage on the licensee's contractors shall be provided by the licensee; and

m. A licensee may elect to self-insure to provide the insurance coverage required under this section, subject to the restrictions set forth in this subsection, provided that the licensee submits to the city copies of its certificates of self-insurance from the state department of insurance and of its most recent audited financial statements, showing self-insurance reserves or other assets sufficient to pay judgments equal to the limits set forth in subsection (b)(1) of this section. A licensee shall also provide to the city documentation evidencing its process for reviewing and paying claims. The city shall be protected by a licensee's self-insurance to the same extent as an additional insured on a policy issued by an insurance company. If, during the term of a license granted hereunder, a licensee's self-insurance program ceases, or a licensee's assets or reserves are no longer sufficient to comply with the coverage requirements of subsections (b)(2)a through l of this section, the licensee shall immediately notify the city of such lapse of coverage, and the licensee shall obtain commercial insurance in accordance with requirements in subsections(b)(2)a through l of this section within 30 days following such notice.

(c) *No right of recovery.* Insurers shall have no right of recovery against the city, it being the intention hereby that the insurance policies required in this section shall protect licensees and the city, and shall be primary coverage for all losses covered by such policies. Such policies shall provide that the issuing company waives all right of recovery by way of subrogation or assignment against the city in connection with any damage covered thereby. Companies issuing such policies shall have no recourse against the city for payment of any premiums or assessments, same being at the sole risk of the licensees.

(d) *Lapse of coverage an event of default.* A licensee shall continuously and without interruption maintain in full force and affect the required insurance coverage and limits set forth in this section. Failure to maintain such insurance shall constitute an event of default, and the city, at its option, may terminate any license granted pursuant to this section, in accordance with the provisions of section 38-205

(Code 1993, § 76-31; Ord. No. 99-11, § 7, 9-20-1999)

Sec. 38-205. Default and termination.

(a) *Events of default.* The occurrence of any of the following shall constitute an event of default by a licensee:

(1) Failure of a licensee to comply with any material term, condition, or provision of this article or the license ordinance applicable to such licensee;

(2) Any intentional false statement or misrepresentation as to a material fact by an applicant;

(3) A licensee's loss of or failure to obtain licenses, permits, and certifications lawfully required by any statute, ordinance, rule, or regulation of any regulatory body having jurisdiction over the licensee's operations and to pay all fees associated therewith;

(4) An act or omission of a licensee constituting a knowing or intentional evasion of payment of any fee payable hereunder.

(b) *Cure period.* If a licensee continues to violate or fail to comply with a material term or provision of this article for a period of 30 days following notification in writing by the city to cure such specific alleged violation or failure to comply, then the city may follow the procedures set forth in this section to declare that the licensee has terminated all rights and privileges consented to pursuant to this article and the licensee's license ordinance; provided, however, if a licensee is alleged to be in violation of any material provision of this article, other than the payment of a fee due hereunder, and if the licensee commences efforts to cure such alleged violation within 30 days following receipt of written

notice thereof and shall thereafter prosecute such curative efforts with reasonable diligence until such curative efforts are completed, then such alleged violation shall cease to exist and no further action shall be taken at that time.

(Code 1993, § 76-32; Ord. No. 99-11, § 8, 9-20-1999)

Sec. 38-206. Transfer of authority.

(a) *Prohibition.* Any right, privilege, and license granted pursuant hereto may not be assigned, in whole or in part, without the prior consent of the city expressed by resolution or ordinance, and then only under such conditions as may tin this section be prescribed, except as otherwise provided in subsection (d) of this section. No such consent by the city shall be unreasonably withheld, conditioned, or delayed. No assignment in law or otherwise shall be effective until the assignee has filed with the city an instrument, duly executed, reciting the fact of such assignment, accepting the terms hereof and of the license ordinance, and agreeing to comply with all the provisions thereof. A mortgage or other pledge of assets in a bona fide lending transaction shall not be considered an assignment of a license for the purposes of this article.

(b) *Process.* Upon receipt of a request for consent to an assignment, the city shall diligently investigate the request in a timely manner and place the request on the city council agenda at the earliest practicable time. The city council shall proceed to act on the request within a reasonable period of time.

(c) *Scope of review.* In reviewing a request for assignment, the city may, to the extent permitted by law, inquire into the legal, technical, and financial qualifications of the prospective assignee, and the licensee shall assist the city in so inquiring. The city may condition said assignment upon such terms and conditions as it deems reasonably necessary, provided its approval and any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective assignee, as well as the licensee's compliance with the terms of this section.

(d) *Assignments not requiring approval.* Notwithstanding any other provision contained in this article to the contrary, the prior approval of the city shall not be required for any transfer of ownership or control of a provider's business, except that the provider shall maintain with the city current point of contact information; provided, however, no such assignment shall be effective until the licensee shall have given written notice thereof to the city.

(e) *Release.* Upon receiving the city's consent to an assignment, or, in the event of an assignment qualifying under subsection (d) of this section, upon giving notice under subsection (d) of this section, a licensee shall be relieved of all conditions, obligations, and liabilities arising or which might arise under this section that are assumed by the assignee.

(Code 1993, § 76-33; Ord. No. 99-11, § 9, 9-20-1999)

Sec. 38-207. Miscellaneous provisions.

(a) *Work by others, construction by abutting owners, and alterations to conform with public improvements.*

(1) The city reserves the right to lay and permit to be laid, sewer, gas, water, and other pipe lines or cables and conduits, and to do and permit to be done, any underground and overhead work, and any attachment, restructuring, or changes in aerial facilities that may be deemed necessary or proper by the city in, across, along, over, or under any public right-of-way occupied by providers, and to change any curb or sidewalk or the grade of any street. In permitting such work to be done, the city shall not be liable to providers for any damages not directly caused by the misconduct or gross negligence of the city; provided, however, nothing in this section shall relieve any other person or entity, including any contractor, subcontractor, or agent from liability for damage to a licensee's facilities.

(2) If during a license term the city authorizes abutting landowners to occupy space over, under, or across the surface of any public right-of-way, such grant to an abutting landowner shall be subject to the rights in this section granted to a licensee. In the event that the city shall close or abandon any public right-of-way, which contains any portion of a licensee's network facilities, any conveyance of land contained in such closed or abandoned public right-of-way shall be subject to the rights of a licensee under this section and under the licensee's license ordinance.

(3) Providers shall be liable for the acts or omissions of any person used by such providers when such person is involved directly or indirectly in the construction and installation of such providers' network facilities to the same extent as if the acts or omissions of such person were the acts or omissions of the provider.

(b) *Annexation and disannexation.* Within 30 days following the date of passage of any action effecting the annexation of any property to, or the disannexation of any property from, the city's corporate boundaries, the city shall furnish licensees written notice of the action and an accurate map of the city's corporate boundaries showing, if available, street names and number details. For the purpose of compensating the city under this article, a licensee shall start including or excluding access lines or subscribers, as applicable, within the affected area in the licensee's count of access lines or subscribers, as applicable, on the effective date designated by the comptroller of public accounts of the state for the imposition of state local sales and use taxes; but in no case less than 30 days following the date the licensee is notified by the city of the annexation or disannexation.

(c) *Confidential records.* Upon the notification by a licensee to the city of the confidential nature of any information, report, document, or writing, the city shall maintain the confidentiality of such information, report, document, or writing to the extent permitted by law. Upon receipt by the city of requests for the licensee's confidential information, report, document, or writing, the city shall notify the licensee of the request, in writing. Unless otherwise approved in writing by the applicable licensee, the city shall request an attorney general's opinion before disclosing any confidential information, report, document, or writing, and will furnish the licensee with copies of such requests.

(d) *Abandonment of public rights-of-way.* If the city conveys, closes, abandons, or releases its interest in or authority over any public right-of-way containing network facilities installed or operated pursuant to a license ordinance, any such conveyance, closure, abandonment, or release shall be subject to the rights of the licensee under the license ordinance.

(e) *Right to audit.* The city reserves the right to inspect a provider's business records to the extent necessary to ensure compliance with the access line and/or subscriber reporting requirements of this article. Any such review shall be commenced within 90 days following the filing of a certified report of access lines and/or subscribers. If any such inspection discovers an underpayment due to the city that exceeds five percent of the total amount paid for any quarterly reporting period, then the licensee shall promptly reimburse the city for the actual and reasonable cost of such audit. The provider shall also pay the city all actual amounts of the underpayments as determined by the audit, plus interest as provided in this article.

(f) *Force majeure.* Other than for the failure to pay amounts due and payable under this article, a licensee shall not be in default or be subject to sanction under any provision of this article when its performance is prevented by force majeure. The term "force majeure" means an event caused by strike or other labor problem; embargo; epidemic; act of God; fire; flood; adverse weather conditions, or other major environmental disturbance; act of military authority; or war or civil disorder, provided that such causes are beyond the reasonable control and without the willful act, fault, failure, or negligence of the licensee. Performance is not excused under this section following the end of the applicable event of force majeure.

(g) *Controlling law.* This article, and any license issued hereunder, shall be governed by the laws of the state and the United States, and venue for any action hereunder shall be in the county.

(h) *Effective date of license.* Any license granted hereunder shall be effective upon the adoption of the applicable license ordinance and the filing of necessary certificates of insurance as otherwise required in this section.

(Code 1993, § 76-34; Ord. No. 99-11, § 10, 9-20-1999)

FOOTNOTE(S):

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State Law reference— Management of public right-of-way used by telecommunications provider in municipality, V.T.C.A., Local Government Code ch. 283. (Back)

Chapter 39 RESERVED

Chapter 40 SUBDIVISIONS [1]

ARTICLE I. - IN GENERAL

ARTICLE II. - PROCEDURE FOR SUBMISSION OF PLATS

ARTICLE III. - DESIGN STANDARDS

ARTICLE IV. - SPECIAL REQUIREMENTS

FOOTNOTE(S):

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State Law reference— Regulation of subdivision and property development, V.T.C.A., Local Government Code ch. 212. (Back)

ARTICLE I. IN GENERAL

Sec. 40-1. Application.

Sec. 40-2. Definitions.

Sec. 40-3. Special provisions.

Sec. 40-4. Lot consolidations and minor plats.

Secs. 40-5—40-26. Reserved.

Sec. 40-1. Application.

This chapter shall apply to all subdivisions of land within the city and its area of extraterritorial jurisdiction.

(Code 1993, § 70-1; Ord. No. 2001-19, § 2, 1-7-2002)

Sec. 40-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Block means an identified tract or parcel of land established within a subdivision surrounded by a street or a combination of streets and other physical features and which may be further subdivided into individual lots or reserves, as defined in section 40-73.

Comprehensive plan means the general plan for growth and development of the city and its environs, including any elements of such plan, such as a land use plan, thoroughfare plan, utilities plan, drainage plan, infrastructure master plan, parks plan, capital improvement plan, and others.

Easement means an area intended for restricted use on private property upon which a person has the right to remove and keep removed all or part of any buildings, fences, trees, shrubs, and other improvements or growths which in any way endanger or interfere with the construction, maintenance, or operation of any of their respective utility, drainage, access, or other authorized systems or facilities located within any such easement. Any such person owning an easement shall, at all times, have the right of unobstructed ingress and egress to and from and upon the said easement for the purpose of constructing, reconstructing, inspecting, patrolling, maintaining, and adding to or removing all or part of their respective systems or facilities without the necessity at any time of procuring the permission of the property owner or inhabitant.

Final plat means a complete and exact subdivision plan prepared in conformity with the provisions of this chapter and in a manner suitable for recording with the county clerk of either county.

Lot means a physically undivided tract or parcel of land having frontage on a public street or approved private street that has been built to meet current city specifications and which is, or in the future may be, offered for sale, conveyance, transfer or improvements; which is designated as a distinct and separate tract; and which is identified by a tract or lot number or symbol on a duly approved subdivision plat that has been properly recorded.

Minor plat means an amending plat described in V.T.C.A., Local Government Code § 212.016, a replat involving four or fewer lots fronting on an existing street and not requiring the creation of any new street or the extension of municipal facilities; or a replat under V.T.C.A., Local Government Code § 212.0145 that does not require the creation of any new street or the extension of municipal facilities.

Preliminary plat means a map or drawing of a proposed subdivision prepared in accordance with the provisions of this chapter, illustrating the features of the development for review and preliminary approval by the planning and zoning commission, but not suitable for recording with the county clerks of either county.

Street means a thoroughfare or right-of-way designed or used as a transit way for motor-driven vehicles.

Street, arterial, means a street designed as a principal traffic artery, more or less continuous across the city, intended to connect remote parts of the city, and used primarily for fast or heavy volume traffic.

Street, collector, means a street designed to carry traffic from local streets to the major system of arterial streets and highways.

Street, local, means a street used primarily for access to abutting properties and which is intended to serve traffic within a limited area.

Street, private, means a privately owned street approved by the city and that has been built to meet city specifications, which provides vehicular access to adjacent private land.

Street, public, means a street owned and maintained by the city, county, state, or federal government.

Subdivider and/or developer means the terms "subdivider" and "developer" are synonymous for the purposes in this section, and shall include any owner, or authorized agent thereof, proposing to divide or dividing land so as to constitute a subdivision according to the terms and provisions of this chapter.

Subdivision means the division of any lot, tract or parcel of land by plat, map or description into two or more parts, lots or sites for the purpose, whether immediate or future, of sale, rental or lease, or division of ownership. Any dedication and the laying out or realignment of new streets, or other public or private access ways, with or without lotting, shall constitute a subdivision. The term "subdivision" shall also include the resubdivision and replatting of land or lots that are part of a previously recorded subdivision. An addition is a subdivision as defined in this section. The term "subdivision" shall also include the division of land whether by plat or by metes and bounds description and when appropriate to the context, shall relate to the process of subdividing or to the land subdivided.

Title certificate means a certificate prepared and executed by a title company authorized to do business in the state or an attorney licensed in the state describing all encumbrances of record that affect the property, together with all deeds recorded from and after August 15, 1983. Such certificate shall include all property included within the platted area, and such certificate shall not have been executed more than 45 days prior to submission of same to the planning and zoning commission.

(Code 1993, § 70-2; Ord. No. 2001-19, § 2, 1-7-2002; Ord. No. 2005-12, § 1, 12-5-2005; Ord. No. 2011-08, § 1, 5-2-2011)

Sec. 40-3. Special provisions.

(a) *Plat approval required.* It shall be unlawful for any person to subdivide any tract, lot, or parcel of land within the city or within the extraterritorial jurisdiction of the city, unless and until a preliminary and final plat of such subdivision has been approved in accordance with the terms of this chapter. Unless and until a preliminary and final plat, plan or replat of a subdivision shall have been first approved in the manner provided in this chapter by the planning and zoning commission, it shall be unlawful for any person to construct or cause to be constructed any street, utility facility, building, structure, or other improvement on any lot, tract, or parcel of land within such subdivision, except as specifically permitted in this chapter. In addition, it shall be unlawful for any city official to issue any permit for such improvements, or any aspect thereof, or to serve or connect said land, or any part thereof, with any public utility which may be owned, controlled, or distributed by the city. Provided further, it shall be unlawful for any person to serve or connect any lot, tract, or parcel of land within any such subdivision with any utility service or facility unless and until a final plat of such subdivision has been approved in accordance with this chapter.

(b) *Improvements required.* All of the improvements required under these regulations, improvements specified in the city's comprehensive plan, and improvements which, in the judgment of the planning and zoning commission, are necessary for the adequate provision of streets, drainage, utilities, municipal services and facilities to the subdivision, shall be constructed at the sole expense of the developer.

(c) *Streets and utilities.* The city shall not repair, maintain, install or provide any streets or public utility services within a subdivision for which a final plat has not been approved and filed of record and in which the standards contained in this chapter or referred to in this chapter have not been complied with in full.

(d) *Exceptions.*

(1) The provisions of this chapter shall not be construed to prohibit the issuance of permits for construction on any lot which was in existence prior to August 15, 1983, nor to prohibit the

repair, maintenance or installation of any street or public utility service for, to or abutting any lot, the last recorded conveyance of which prior to August 15, 1983, was by metes and bounds, and/or any subdivision, or lot therein, recorded or unrecorded, which subdivision was in existence prior to August 15, 1983.

(2) A division of land does not include a minor plat approved in accordance with section 40-4

(3) A division of land does not include the merger of two or more adjoining lots or tracts of land, with common ownership, that the owners wishes to merge into one lot in order to avoid the creation of a technical violation of the city's building, subdivision and zoning regulations relating to building setback lines. This exception applies only if:

a. The lots or tracts had at least one owner in common as of the effective date of the ordinance from which this chapter is derived;

b. The lots or tracts are located in the Recorded Plat Revised Map of Tomball Harris Co., Texas recorded July 9, 1912, a true and correct copy of which is attached to the ordinance from which this chapter is derived as Exhibit "A" which is on file with the city secretary and incorporated in this chapter by reference for all purposes;

c. A structure existed on the lots or tracts, as of the effective date of the ordinance from which this chapter is derived, provided, however, that this exception shall not apply in the event that 60 percent or more of the square feet of the structure is removed or destroyed;

d. The joinder of lots or tracts does not require the dedication or removal of any public rights-of-way, public easements or other public improvements;

e. The owner or owners agree in writing on a form approved by the city that the merged lot may not be divided in the future unless a subdivision plat authorizing such division is approved by the city and filed of record in accordance with applicable state laws and city ordinances governing plats and the subdivision of land. The form must also inform and declare that any subsequent purchaser will be bound by the requirements of this exception and the form shall be filed in the county clerk's office of the county in which the property is located. A property owner who has elected to join one or more lots pursuant to this subsection may file an election with the city to reverse the joinder of lots so long as no violation of the city's setback requirements in the building, subdivision, or zoning regulations is created by the reversal.

Two or more platted lots joined together pursuant to this subsection shall be considered one joined lot for purposes of this chapter; provided, however, that nothing contained in this chapter, shall otherwise constitute an exception to the platting requirements imposed by this chapter.

(e) *Authorized agent.* A person may act as agent for a subdivider/developer upon submission with each application for preliminary and/or final plat approval of a certified copy of a power of attorney, certified by the county clerk of either counties, containing in such certification the recording information of such power of attorney in the records of either county, and such certification being dated not more than seven days prior to the date of such application filing. Further, the power of attorney must specifically authorize the applicant to act on behalf of the subdivider/developer, must specifically identify the tract proposed for subdivision, and must state that the power of attorney authorizes the agent to execute all necessary documents and dedicatory statements necessary to effect final plat approval and recording thereof.

(Code 1993, § 70-3; Ord. No. 2001-19, § 2, 1-7-2002; Ord. No. 2011-08, § 2, 5-2-2011; Ord. No. 2011-10, § 1, 7-5-2011)

Sec. 40-4. Lot consolidations and minor plats.

(a) Upon payment of the fee established by resolution of the city council, a person may submit an application for a minor plat approval.

(b) The city manager, or the city manager's designee, may approve a minor plat.

(c) After the city manager approves a minor plat, the minor plat shall be placed on the planning and zoning commission's next regular agenda as a nonaction item for information purposes only.

(d) Any person may appeal the approval of a minor plat by filing a written notice of appeal within three working days after the planning and zoning commission meeting at which the minor plat approval is submitted. Upon the filing of the appeal, the minor plat shall be deemed a preliminary plat and shall be placed on the city planning and zoning commission's next regular agenda for consideration within the time periods specified in this chapter.

(e) Upon expiration of the time for appeal, the city engineer shall sign the minor plat on behalf of the city.

(f) The person to whom a minor plat is presented shall not disapprove a minor plat, but shall be required to refer any plat which such person refuses to approve to the city's planning and zoning commission within the time period specified in this chapter.

(Ord. No. 2011-08, § 3, 5-2-2011)

Secs. 40-5—40-26. Reserved.

ARTICLE II. PROCEDURE FOR SUBMISSION OF PLATS [2]

Sec. 40-27. Preliminary conference.

Sec. 40-28. Application for preliminary plat approval.

Sec. 40-29. Form and content of preliminary plats.

Sec. 40-30. Application for final plat approval.

Sec. 40-31. Form and content of final plat.

Sec. 40-32. Plat drawing, reproductions, and filing.

Sec. 40-33. Title report.

Sec. 40-34. Planning and zoning commission action.

Sec. 40-35. Expiration of plat approval.

Sec. 40-36. Abbreviated platting procedure.

Secs. 40-37—40-60. Reserved.

Sec. 40-27. Preliminary conference.

Prior to the official filing of a preliminary plat, the subdivider, his planner, or other appropriate representative shall consult with the planning and zoning commission for comments and advice on the procedures, specifications, and standards required by the city as conditions for subdivision plat approval. If requested in writing, the planning and zoning commission shall place, for discussion purposes only, an item on its agenda regarding the proposed subdivision in order to assist a subdivider on matters affecting such proposed subdivision.

(Code 1993, § 70-11; Ord. No. 2001-19, § 2, 1-7-2002)

Sec. 40-28. Application for preliminary plat approval.

Any person desiring approval of a preliminary plat shall first file, in triplicate, an application for preliminary plat approval. Forms for such applications shall be kept on file with the city secretary and shall be in a form approved by the planning and zoning commission. Consideration of a preliminary plat by the planning and zoning commission shall not occur unless a fully completed and executed application has been filed in accordance with this article. If, in the opinions of both the city engineer and the city attorney, the form of the application or plat submitted therewith does not conform with or meet the minimum requirements of this article, the chairperson of the planning and zoning commission is hereby authorized to deny, on behalf of the commission, any application for preliminary plat approval.

(1) *Submittal date and time.* All plats, maps, reproductions, fees, applications, and related materials shall be submitted to the city secretary not later than 12:00 noon, seven days prior to the next regularly scheduled commission meeting. Materials received after 12:00 noon on the date specified in this article shall automatically be placed on the agenda of the second regularly scheduled planning and zoning commission meeting following submittal.

(2) *Copies required.* The applicant shall provide 20 24-inch by 36-inch paper prints from the original drawing of the plat reproduced on white paper with blue or black lines, each of which shall be folded to 8½ inches by 12 inches, and indicating the title block in the lower right-hand corner of the plat.

(3) *Filing fees.* An application for preliminary plat approval shall be accompanied by a nonrefundable application fee tendered in the form of a certified check and made payable to the "City of Tomball, Texas," in the amount as is specified in the city's schedule of fees, as currently established or as hereafter adopted by resolution of the city council from time to time.

(4) *Encumbrances information.* An application for preliminary plat approval shall be accompanied by a title opinion or a statement or certificates, either in a separate writing or on the face of the plat, and properly executed by the applicant or the person who prepared the plat, certifying that all existing encumbrances other than liens, such as various types of easements, fee strips, or significant topographical features such as lakes, ponds, bayous or other bodies of water; creeks, streams, gullies, ravines, ditches, or other natural drainageways; and any known fault lines, on the land being platted, are fully shown and accurately identified on the face of the plat, and further stating whether the plat being submitted includes all of the contiguous land that the subdivider owns directly or indirectly, or has a legal or beneficial interest in, or whether the subdivider owns or has a legal interest in any adjacent property. If the subdivider owns or has a legal interest in any adjacent property, the extent of such ownership and a boundary description of the land involved shall also be provided.

(5) *Notice to utilities.* Evidence of notice to all utility companies that provide service to the area encompassed by the proposed subdivision, whether public or private, shall accompany each application for preliminary plat approval. Such notice shall contain a statement of the intent to subdivide, the intended use of the property within the subdivision, and shall have attached to such notice a copy of the preliminary plat that is filed within the city.

(Code 1993, § 70-12; Ord. No. 2001-19, § 2, 1-7-2002)

Sec. 40-29. Form and content of preliminary plats.

All preliminary plats submitted to the planning and zoning commission shall be in the form and contain fully all information and/or language required hereunder:

(1) The proposed name of the subdivision or development, which shall not be a duplicate of any subdivision or development of record within either counties;

(2) The legal description of the property proposed to be subdivided, including the name of the county, survey, and abstract number, together with reference to at least one established corner of a nearby recorded subdivision or the nearest public street right-of-way intersection;

(3) The total acreage, as delineated by four digits to the right of the decimal point; square footage, as delineated by two digits to the right of the decimal point; and total number of lots, blocks, and reserves;

(4) The name, address, and phone number of the owner of the property. If the owner is other than a natural person, the name of the owner, or principal officer, of the entity which owns such property, and his respective address and phone numbers;

(5) The name, address, and phone numbers of the person or firm who prepared the plat;

(6) The date on which the plat was drawn;

(7) The north arrow point. The drawing of the subdivision shall be oriented with north to the top of the drawing, unless the subdivision is configured in such a way as to make this confusing;

(8) The scale of the plat shall be drawn numerically and a graphic/bar scale shall be provided. The scales acceptable for a preliminary plat shall be either one inch equals 100, 200, 300 or 400 feet, or for small projects (less than ten acres) one inch equals 20, 30, 40, 50 or 60 feet;

(9) A scale vicinity map, including key map numbers, shall be provided and made a part of the plat indicating the general location of the subdivision and its relationship with well-known streets, railroads, watercourses and similar features in all directions from the subdivision to a distance not less than one-half mile. The scale of the vicinity map shall be to legible scale and shall be oriented with north to the top of the drawing that shall also be the same direction as the detailed subdivision drawing;

(10) The plat boundaries shall be drawn with heavy lines to indicate the subdivided area with overall survey dimensions and bearings. Lines outside the plat boundary should be drawn as dashed lines;

(11) The adjacent areas outside the plat boundaries shall be identified indicating the name of adjacent subdivisions (including recording information), the names of the recorded owners of adjacent parcels of land, churches, schools, parks, bayous, and drainageways, acreage, and all existing streets, easements, pipelines, and other restricted uses;

(12) The location and approximate width of existing and proposed waterways, such as creeks, streams, gullies, ravines, or ditches; drainage easements; topographical elevations; and the boundaries of designated flood zones, as provided in the most recent edition of the federal insurance rate map. All such information required in this section shall be certified by a registered professional land surveyor;

(13) Contours with intervals of five-tenths foot, referred to sea level (most recent editions of the U.S. Coast and Geodetic Survey) datum, as required to show at least two contours within and adjacent to the subdivision. If the change in elevation throughout the property to be subdivided is less than one foot, then the plat is to clearly show the outfall drainage plan. Identify basis of control and temporary benchmark set within the subdivision;

(14) The location and identification of all tracts not designated as lots within the boundaries of the plat. Such tracts, if not restricted for specific uses, shall be identified as unrestricted reserve. Restricted reserves shall be indicated on the plat and shall be designated as single-family residential, utility, church, park, recreational, school, or other specific use;

(15) The location, widths, names, and recordation information from the appropriate county property records of all existing or platted streets, roads, alleys, and easements, either existing or proposed, within the plat boundaries or immediately adjacent thereto, the location of all existing permanent buildings within the plat boundaries, and all existing easements and other important features, such as section lines, political subdivision or corporate limit lines, on all sides, for a distance of not less than 200 feet;

(16) Existing sewers, water and gas mains, culverts, bridges, pipelines, structures, or public utilities within the tract and immediately adjacent thereto with ownership, sizes of the improvements, grades, and locations indicated; and

(17) The proposed layout of the subdivision, showing streets, blocks, lots, alleys, easements, building setback lines, parks, and other features, if known, within the plat boundaries, with principal dimensions, if known.

(Code 1993, § 70-13; Ord. No. 2001-19, § 2, 1-7-2002)

Sec. 40-30. Application for final plat approval.

Any person desiring approval of a final plat shall first file an application for final plat approval. Forms for such applications shall be kept on file with the city secretary and shall be in a form approved by the commission. Consideration of a final plat by the planning and zoning commission shall not occur unless a fully completed and executed application has been filed in accordance with this article. If, in the opinions of both the city engineer and the city attorney, the form of the application or plat submitted therewith does not conform with or meet the minimum requirements of this article, the chairperson of the commission is hereby authorized to deny, on behalf of the planning and zoning commission, any application for final plat approval.

(1) *Time for filing.* All plats, maps, reproductions, fees, applications, and related materials shall be submitted to the city secretary not later than 12:00 noon, seven days prior to the next regularly scheduled commission meeting. Materials received after 12:00 noon on the date specified in this section shall automatically be placed on the agenda of the second regularly scheduled commission meeting following submittal.

(2) *Copies required.* The applicant shall provide 20 24-inch by 36-inch paper prints from the original drawing of the plat reproduced on white paper with blue or black lines, each of which shall be folded to 8½ inches by 12 inches, and indicating the title block in the lower right-hand corner of the plat.

(3) *Filing fees.* An application for final plat approval shall be accompanied by a nonrefundable application fee tendered in the form of a certified check and made payable to the "City of Tomball, Texas," in the amount as is specified in the city's schedule of fees as currently established or as hereafter adopted by resolution of the city council from time to time.

(Code 1993, § 70-14; Ord. No. 2001-19, § 2, 1-7-2002)

Sec. 40-31. Form and content of final plat.

All final plats shall incorporate all of the provisions relating to preliminary plats in section 40-29 and, where appropriate, reflect any conditions and requirements of final approval previously imposed by the planning and zoning commission together with the following additional requirements:

(1) The final plat shall be drawn on stable plastic film or positive photographic film with black lines and image and shall be made suitable for the reproduction of direct positive prints and reproductions. Paper sepia shall not be used;

(2) Scale for a final plat drawing shall be one of the following: one inch equals 100, 60, 50, 40, 30 or 20 feet;

(3) All engineering and surveying data shall be shown on the final plat sufficient to locate all of the features of the plat on the ground. This data shall include, but not be limited to, full dimensions along all boundaries of the plat; street and alley rights-of-way; easements; drainageways, such as lakes, ponds, bayous, creeks, streams, gullies, ravines, or ditches, together with the location of the high bank of such drainageways and watercourses; lots; blocks; reserves; out tracts, or any other tracts designated separately within the plat boundaries; fee strips, or any other physical or topographical features necessary to be accurately located by surveying methods. Such information shall include line dimensions, bearings of deflecting angles, radii, central angles and degree of curvature, length of curves and tangent distances, all of which are to be shown in feet and decimal fractions thereof;

(4) The name, address and phone number of the owner of the property. If the owner is other than a natural person, the name of the owner, or principal officer, of the entity which owns such property, and his respective address and phone numbers;

(5) The name and seal of the registered professional land surveyor responsible for preparing the plat;

(6) The date of submittal, and the date of submittal of each subsequent revision;

(7) All streets and alleys with street names, widths measured at right angles or radially (where curved), complete curve data (R, L, P.C., P.R.C., and P.T.) length and bearing all tangents between curves;

(8) Building lines and easements shall be shown and shall be defined by dimension. All principal lines shall have the bearing given and deviation from the norm indicated. The plat must provide a note stating that all existing pipelines or pipeline easements through the subdivision have been shown or that there are no existing pipeline easements within the limits of the subdivision;

(9) All field surveys shall be accurate to, and performed in accordance with, the appropriate provisions of the current edition of the Manual of Practice Standards for Surveying in Texas, as periodically published by the Texas Society of Professional Surveyors. Linear dimensions shall be expressed in feet and decimals of a foot; angular dimensions may be shown by bearings in degrees, minutes, and seconds. Curved boundaries shall be fully described and all essential information given. Circular curves shall be defined by actual length of radius and not be degree of curve;

(10) The intended use of all lots within the subdivision shall be identified on the plat. All tracts not designated as lots within the boundaries of the plat shall be identified as provided in section 40-29(14); and

(11) All dedication statements and certificates shall be made a part of the final plat drawing and shall conform in form and content to the form of statements and certificates set forth in section 40-104

(Code 1993, § 70-15; Ord. No. 2001-19, § 2, 1-7-2002)

Sec. 40-32. Plat drawing, reproductions, and filing.

The original plat drawing for an approved final plat shall be submitted to the planning and zoning commission on a suitable permanent translucent material that the planning and zoning commission shall, by written rule, from time to time, designate, including, but not limited to, stable plastic film or positive photographic film with lines, with lettering and signatures in black ink or image. Paper sepia shall not be used. The names of all persons signing any such plat shall also be lettered under the signature. Two paper prints from the original plat drawing (white paper with blue or black lines) and one positive vellum or film transparency shall also be provided. Filing of such final plats with the county clerk of either county, as applicable, for recording, shall be made by the city. Such filing shall not be made until:

(1) Completion by the developer of all improvements required as a condition of plat approval and acceptance of such improvements by the city council; or

(2) The filing of a sufficient guarantee of such performance by the developer in accordance with section 40-106. Such filing by the city shall be made promptly upon the satisfaction of either condition.

(Code 1993, § 70-16; Ord. No. 2001-19, § 2, 1-7-2002)

Sec. 40-33. Title report.

A current title report, statement or opinion, title policy or certificate or letter from a title company authorized to do business in the state or an attorney licensed as such in the state shall be provided

certifying that, within 45 days prior to the date the final plat is dated and filed with the planning and zoning commission, a search of the appropriate records was performed covering the land proposed to be platted and providing the following information concerning the title to said land:

(1) The date of the examination of the records;

(2) A legal description of the property lying within the proposed subdivision, including a metes and bounds description of the boundaries of said land;

(3) The name of the record owner of fee simple title as of the date of the examination of the records, together with the recording information of the instruments whereby such owner acquired fee simple title;

(4) The names of all lienholders together with the recording information and date of the instruments by which such lienholders acquired their interests;

(5) A description of the type and boundaries of all easements and fee strips not owned by the subdivider of the property in question, together with certified copies of the instruments whereby the owner of such easements or fee strips acquired their title, and the recording information for each such instrument; and

(6) A tax certificate from each city, county, school district, utility, or other governmental entity in which the land being platted is located showing that no delinquent taxes are due such entity for the property being platted.

(Code 1993, § 70-17; Ord. No. 2001-19, § 2, 1-7-2002; Ord. No. 2005-12, § 2, 12-5-2005)

Sec. 40-34. Planning and zoning commission action.

The planning and zoning commission shall review each plat submitted to it on a preliminary basis and upon a final basis. The planning and zoning commission shall approve any plat if it is in compliance with the provisions of this article and other rules and regulations as may have been or may be adopted by the city council governing plats and/or the subdivision of land. Upon the receipt of a plat, the planning and zoning commission's authorized actions are as follows:

(1) Grant preliminary approval or preliminary approval with conditions;

(2) Defer preliminary action until the next regular meeting;

(3) Grant final approval, if in conformance with the conditions of preliminary approval or final approval, subject to additional conditions; or

(4) Disapprove any plat, either preliminary or final, if the planning and zoning commission determines that it fails to comply with the policies, standards, or requirements contained in this article or other rules or regulations as may have been adopted by the city council governing plats and/or the subdivision or land.

(Code 1993, § 70-18; Ord. No. 2001-19, § 2, 1-7-2002)

Sec. 40-35. Expiration of plat approval.

All preliminary plat approvals granted by the planning and zoning commission and the conditions thereon, if any, shall be valid for a period of six months from the date on which the approval was granted. All final plat approvals granted by the planning and zoning commission and the conditions thereon, if any, shall be valid for a period of six months from the date on which the final approval was granted. The planning and zoning commission may, upon receipt of a written request from the subdivider or his authorized agent, prior to the expiration date of the final plat approval, extend this term of approval for any time period not to exceed an additional six months. The maximum term for approval of any final plat granted by the planning and zoning commission that has not been duly recorded shall not exceed a total of 12 months from the date on which the planning and zoning commission granted final plat approval.

(Code 1993, § 70-19; Ord. No. 2001-19, § 2, 1-7-2002)

Sec. 40-36. Abbreviated platting procedure.

(a) *Applicability.* Any person proposing to divide land or consolidate lots or tracts of land may apply for final plat approval pursuant to this section without the necessity of having first received preliminary plat approval if:

(1) Each lot, tract or parcel of land within the area subject to the plat has direct access to a public street which complies with the requirements hereunder for new subdivisions;

(2) There is no need for street or thoroughfare dedication pursuant to the city's comprehensive plan within the area subject to the plat; and

(3) There is no need for dedication, abandonment, or relocation of easements or rights-of-way for water and/or sanitary sewer services, public utilities, streets, or surface water drainage within the area subject to the plat.

(b) *Procedure/requirements.* The procedures, application and plat requirements, planning and zoning commission action and other matters relating to or required for the submission, review, approval and filing of a final plat as required in sections 40-30 thru 40-35 shall apply to plats submitted under this section.

(Code 1993, § 70-20; Ord. No. 2001-19, § 2, 1-7-2002)

Secs. 40-37—40-60. Reserved.

FOOTNOTE(S):

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State Law reference— Approval of plats by municipality required, V.T.C.A., Local Government Code § 212.005; authority responsible for approval of plats, V.T.C.A., Local Government Code §§ 212.006, 212.007. (Back)

ARTICLE III. DESIGN STANDARDS [3]

Sec. 40-61. Standards and specifications.

Sec. 40-62. Comprehensive plan.

Sec. 40-63. General requirements.

Sec. 40-64. Public streets; general arrangement and layout.

Sec. 40-65. Streets; specific standards.

Sec. 40-66. Street paving.

Sec. 40-67. Street names.

Sec. 40-68. One-foot reserves.

Sec. 40-69. Partial or half streets.

Sec. 40-70. Easements.

Sec. 40-71. Federal flood insurance program.

Sec. 40-72. Building setback requirements.

Sec. 40-73. Reserve tracts.

Sec. 40-74. Lots, general provisions.

Sec. 40-75. Minimum lot sizes.

Sec. 40-76. Utilities.

Sec. 40-77. Drainage.

Sec. 40-78. Sanitary sewer.

Sec. 40-79. Water.

Sec. 40-80. Monuments and markers.

Secs. 40-81—40-103. Reserved.

Sec. 40-61. Standards and specifications.

No preliminary or final plat shall be approved by the planning and zoning commission, and no permit shall be issued for the construction of any improvement intended for public use or for the use of purchasers or owners of lots fronting or adjacent to such improvement, and no improvement intended for public use shall be accepted by the city, unless any such improvements shall comply with the standards and specifications of this article.

(Code 1993, § 70-31; Ord. No. 2001-19, § 2, 1-7-2002)

Sec. 40-62. Comprehensive plan.

All improvements required by this article shall conform to the city's comprehensive plan, this article, or any other federal, state, or local law or regulation applicable thereto, and all construction shall be in accordance with the City of Tomball Minimum Construction Standards for Community Improvements.

(Code 1993, § 70-32; Ord. No. 2001-19, § 2, 1-7-2002)

Sec. 40-63. General requirements.

(a) *Approval of plans required.* Before beginning any construction of the improvements required by this article on proposed roadways, public utilities or drainage facilities, or structures pertaining to any subdivision coming under the provisions of this article and either within the city limits or its extraterritorial jurisdiction, complete plans and specifications for such improvements shall have first been approved, in their entirety, by the city engineer as meeting the appropriate standards as delineated in section 40-62. In addition, within 30 days following completion of all improvements as required by the city of the owner or subdivider of the subdivision, the owner or subdivider shall provide to the city engineer one set of as-built drawings of all underground utilities and street improvements that have been constructed.

(b) *Changes to construction plans.* No change in the plans and specifications for a public improvement required under this article shall be made without the prior written approval of the city engineer.

(c) *Inspection.* The city engineer shall from time to time inspect the construction of all required improvements in the subdivision during the course of construction to see that the same comply with

the city's standards governing same. In this regard, free access to the subdivision shall be accorded the city engineer by the subdivider, his agents and employees. Inspection by the city engineer, or a failure of the city engineer to inspect construction as required in this section, shall not in any way impair or diminish the obligation of the subdivider to install improvements in the subdivision in accordance with plans and specifications therefor as approved by the city engineer, in accordance with the city's standards.

(d) *City standards.* The construction standards referred to in this article may be revised from time to time by the city council without requiring an amendment to this article, such standards being subject to change by motion duly adopted by the city council. Any such changes or revisions shall be immediately noted upon such standards.

(Code 1993, § 70-33; Ord. No. 2001-19, § 2, 1-7-2002)

Sec. 40-64. Public streets; general arrangement and layout.

The public street system pattern proposed within any subdivision shall comply with design standards of this article and shall:

(1) Provide for adequate vehicular access to all properties within the subdivision plat boundaries;

(2) Provide adequate street connections to adjacent properties to ensure adequate traffic circulation within the general area;

(3) Provide a local street system serving properties to be developed for residential purposes which discourages through traffic while maintaining sufficient access and traffic movement for convenient circulation within the subdivision and access by fire, police and other emergency services personnel; and

(4) Provide for a sufficient number of continuous streets to accommodate the traffic demands generated by new development.

(Code 1993, § 70-34; Ord. No. 2001-19, § 2, 1-7-2002)

Sec. 40-65. Streets; specific standards.

(a) *Location and alignment.* The location and alignment of public streets proposed to be dedicated and established within a subdivision plat shall be designed in conformance with the standards listed in section 40-63

(b) *Right-of-way width, widening.* The width of the right-of-way to be dedicated for any street shall be as follows:

(1) *Local streets.* The width of the right-of-way for local streets shall be not less than 80 feet. Provided, however, a right-of-way width of not less than 60 feet may be approved if there is also dedicated a ten-foot-wide drainage and utility easement immediately adjacent to each side of such local street, which, in combination, would total 80 feet in width, and an open ditch drainage system is provided for such street. In those instances where a proposed subdivision is located adjacent to an existing public street with a right-of-way width less than 60 feet, sufficient additional right-of-way shall be dedicated within the subdivision to accommodate the development of the street to a total right-of-way width of not less than 60 feet. Notwithstanding the foregoing, the planning and zoning commission may, on written application, in its discretion authorize a street right-of-way width of not less than 50 feet for a local street where such street cannot reasonably be made to continue or extend onto an existing, approved, proposed, or possible future street, is so located that logically it could not be extended to connect with an existing, approved, or proposed street, there is not a likelihood that it would inhibit the ability of the city to provide emergency services from fire, police, medical, or other rescue personnel, the street provides access to single-family residential properties only, and the total length of such street does not exceed 700 feet.

(2) *Collector streets.* The width of the right-of-way for collector streets shall be not less than 80 feet.

(3) *Arterial streets.* The width of the right-of-way for arterial streets shall be not less than 100 feet.

(c) *Abutments.* All lots shown on the plat shall abut a public street, or abut a private street that shall meet all requirements in this section for public streets. All lots shown on the plat shall have indicated thereon the front of the lot for subsequent construction of a building.

(d) *Curves and intersections.*

(1) *Local, collector, and arterial streets.* The design and construction of all local, collector, and arterial streets shall meet the guidelines set forth in the Policy on Geometric Design of Highways and Streets, fourth edition, 2001, as published by the American Association of State Highway and Transportation Officials (AASHTO), the city's current comprehensive plan, and any other applicable design and construction standards adopted by the city. Such considerations as adopted by the city shall include, but not be limited to street function, street capacity, service levels, traffic safety, pedestrian safety, and utility facilities and their location, which may effect the minimum requirements. Proposed streets shall meet this criteria and be approved by the city engineer prior to final design.

(2) *Right angle.* The angle of street intersections shall not vary more than ten degrees from the perpendicular. Where acute angle intersections are approved a radius of at least 25 feet in the right-of-way line at the acute corner shall be provided.

(e) *Cul-de-sac right-of-way radii.* The radii of the right-of-way at the end of local streets terminated with a circular cul-de-sac turnaround shall be not less than 50 feet. The city shall cause to be erected at the entrance of any such street a sign reading "dead-end street," but such sign shall be at the expense of the developer.

(f) *Dead-end streets.* Dead-end streets shall not be approved except in those instances where the street is terminated by a temporary circular cul-de-sac turnaround or where the street is designated to be extended into adjacent property. Such dead-end streets must also comply with section 40-68, which contains the requirements for the dedication of a one-foot reserve.

(g) *Signs and traffic control devices.* The developer shall be responsible for the installation of all required street signs and traffic control devices, as determined by the city engineer or his designee. All such signs and traffic control devices shall be in accordance with the Texas Manual on Uniform Traffic Control Devices, 1980 edition, as published by the state department of transportation.

(h) *Street lighting.* The developer shall be responsible for the installation of street lighting in accordance with the City of Tomball Minimum Construction Standards for Community Improvements.

(i) *Sidewalks.* The developer shall be responsible for the installation of sidewalks in all residential and commercial subdivisions, except in residential subdivisions along streets with open ditch drainage. Sidewalks shall be constructed in accordance with the City of Tomball Minimum Construction Standards for Community Improvements. Sidewalks, when applicable, shall be considered as part of the required street system, whether public or private.

(Code 1993, § 70-35; Ord. No. 2001-19, § 2, 1-7-2002; Ord. No. 2006-14, § 1, 10-23-2006)

Sec. 40-66. Street paving.

All public or private streets as provided in this article shall be constructed in accordance with the "City of Tomball Minimum Standards for Community Improvements." Provided, however, no public or private street shall be constructed having a pavement width of less than 28 feet.

(Code 1993, § 70-36; Ord. No. 2001-19, § 2, 1-7-2002; Ord. No. 2005-05, § 1, 7-18-2005)

Sec. 40-67. Street names.

All streets dedicated by plat shall be named, and so identified on such plat, in conformance with the following:

(1) *New streets.* New street names shall not duplicate existing street names located within the city, other than extensions of existing streets.

(2) *Extensions of existing streets.* Existing street names shall be used in those instances where a new street is a direct extension of an existing street or a logical extension (when the streets in question are not and cannot be physically continuous) thereof except in those instances where the existing street name is a duplicate street name.

(3) *Suffixes.* Street name suffixes such as court, circle and loop should be designated on streets that are cul-de-sac or in a configuration of a loop street.

(4) *Prefixes.* Street name prefixes such as north, south, east and west may be used to clarify the general location of the street; however, such prefixes shall be consistent with the existing and established street naming and address numbering system of the general area in which the street is located.

(5) *Alphabetical and numerical streets prohibited.* Alphabetical and numerical street names shall not be designated, except in those instances where such street is a direct extension of an existing street with such a name and is not a duplicate street name.

(6) *Street name change.* No street name once designated may be changed except by city ordinance.

(Code 1993, § 70-37; Ord. No. 2001-19, § 2, 1-7-2002)

Sec. 40-68. One-foot reserves.

In those instances where a street is established by a plat submitted to the planning and zoning commission and such street forms a stub street onto adjacent unplatted acreage, or where such street lies along and parallel with the subdivision boundary and is adjacent to unplatted acreage, a one-foot-wide reserve shall be established within the street right-of-way at its dead-end terminus, or along the right-of-way adjacent to such unplatted acreage, to form a buffer strip, dedicated to the public, between the street right-of-way and the adjacent unplatted acreage, to prevent access to such street from the adjacent unsubdivided acreage, unless and until the planning and zoning commission has reviewed the development proposals for such adjacent acreage, and a plat of the adjacent property is duly recorded. The conditions associated with the establishment of a one-foot reserve on a plat are contained in the following notation that shall be placed upon the face of any plat where a one-foot reserve is to be established:

> "One-foot reserve dedicated to the city in fee as a buffer separation between the side or end of streets where such streets abut adjacent acreage tracts, the condition of such dedication being that when the adjacent property is subdivided pursuant to a recorded plat, the one-foot reserve shall thereupon become vested in the public for street right-of-way purposes."

(Code 1993, § 70-38; Ord. No. 2001-19, § 2, 1-7-2002)

Sec. 40-69. Partial or half streets.

Partial or half streets may be dedicated in those instances where the planning and zoning commission determines that it is necessary for the proper development of the land and in the public interest to locate a public street right-of-way centered on a property line. The planning and zoning commission shall not approve a partial or half street dedication within a subdivision dedicating less than a 50-foot right-of-way width for a designated arterial street, or less than a 40-foot right-of-way width for a designated collector street, or less than a 30-foot right-of-way width for any other type public street.

Appropriate notations and the one-foot reserve dedication in fee as provided in section 40-68 shall be placed upon the plat restricting access from any partial or half streets so dedicated to adjacent acreage tracts until the adjacent property is subdivided pursuant to a recorded plat and the additional adjacent right-of-way is acquired providing the full right-of-way as specified in this article.

(Code 1993, § 70-39; Ord. No. 2001-19, § 2, 1-7-2002)

Sec. 40-70. Easements.

(a) *Utility easements.* Utility easements, both above and below grade, are those easements established by plat or separate instrument which are dedicated to the city for public use and designed to accommodate facilities necessary to provide various types of utility services to the individual properties within the plat boundaries. Utility easements may be used for, but not be limited to, facilities necessary to provide water, electrical power, natural gas, telephone, telegraph, cable television, and sanitary sewer services.

(1) *Location.* Utility easements shall be provided along the front of all lots except when the planning and zoning commission determines that such location is not feasible for the orderly development of the subdivision, or where the right-of-way is not wide enough to allow for the proper placement and maintenance of all utilities. Utility easements located along the outer boundaries of a subdivision shall contain the full width required for such easement except in those instances where the adjacent property is within a portion of a previously approved and platted subdivision and under the same ownership as the property being platted or where additional easement width is dedicated by separate instrument by the owner of said adjacent tract. In such cases, one-half of the required easement width shall be dedicated within the platted boundary with the other one-half provided outside the platted boundary by separate instrument or through notation on the plat certifying the ownership and dedication of said easement.

(2) *Widths.* All utility easements established within any subdivision plat shall not be less than ten feet in width, but may be required to be greater where determined by the city engineer.

(3) *Limitations.* All utility easements shall be limited to surface and below-grade easements. Aerial easements over utility easements shall be limited to that necessary for transformers, amplifiers, and other similar devices that cannot be placed below grade, it being the express purpose and intent hereof to require all utilities, to the extent reasonably possible, to be placed below ground level.

(b) *Drainage easements.* All drainage easements shall be located and properly dedicated to the city to accommodate the drainage requirements necessary for the proper development of the property within the subdivision boundaries and within its natural watershed and in conformance with the city's comprehensive plan, its regulations governing storm drainage and/or flood control, and the requirements of other governmental agencies having jurisdiction over storm drainage or flood control within the area in which the subdivision is located. A suitable note on the plat shall restrict all properties within the subdivision to ensure that drainage easements within the plat boundaries shall be kept clear of fences, buildings, obstructive vegetation, and other obstructions to the operation and maintenance of the drainage facilities therein.

(c) *Stormwater detention easements.* Each stormwater detention easement shall be located and designed in accordance with applicable standards of governmental agencies having jurisdiction over surface water drainage or flood control within the area in which the proposed subdivision or development is located. Each subdivision plat that dedicates a stormwater detention easement shall contain a restriction on the plat that:

(1) Prohibits the construction of fences or buildings, whether temporary or permanent, or installation or maintenance of plantings or other obstructions to the operation and maintenance of the facility, within the stormwater detention easement or upon properties adjacent thereto; and

(2) Prohibits drainage from abutting properties directly into the stormwater detention easement except by means of a drainage structure approved by the city engineer or the authorized public drainage or flood control official.

(d) *Private easements, fee strips.*

(1) *Existing easements, fee strips.* All easements or fee strips created prior to the subdivision of any tract of land shall be shown on the subdivision plat of said land with appropriate notations indicating the name of the holder of such easement or fee strip, the purpose of the easement and generally the facilities contained therein, the dimensions of the easement or fee strip tied to all adjacent lot lines, street rights-of-way and plat boundary lines, and the recording reference of the instruments creating and establishing said easement or fee strip. In those instances where easements have not been defined by accurate survey dimensions such as over and across type easements, the subdivider shall request the holder of such easement to accurately define the limits and location of such easement through the property within the plat boundaries. If the holder of such undefined easement does not define the easement involved and will not certify his refusal to define such easement to the planning and zoning commission, the subdivision plat shall provide accurate information as to the centerline location of all existing pipelines or other utility facilities placed in conformance with the easement holder's rights, and building setback lines shall be established not less than 15 feet from and parallel to both sides of the centerline of all underground pipelines or pole lines involved.

(2) *Establishment of special use utility or drainage easements.* A special use utility or drainage easement may be established by subdivision plat when such easement is for the purpose of accommodating a utility or drainage facility owned, operated, and maintained by a unit of government and is restricted to either water mains, sanitary sewers, storm sewers, or other drainage purposes and where it has been determined by the planning and zoning commission that these facilities cannot or should not be accommodated within a general purpose public utility or drainage easement or public street right-of-way. Easements proposed to be established for any privately-owned utility company or private organization providing utility services and restricted for their exclusive use shall not be created by a subdivision plat; however, such private utility facilities may be accommodated and placed within the general purpose utility easements and public streets established within the plat boundary. Nothing in this section, however, may prevent such private companies or the subdivider from granting and establishing special or exclusive use easements by separate instrument if such arrangements are deemed necessary to properly serve the properties within the plat boundaries.

(Code 1993, § 70-40; Ord. No. 2001-19, § 2, 1-7-2002)

Sec. 40-71. Federal flood insurance program.

No subdivision of land shall be approved unless the same complies in all respects with the city's flood damage prevention regulations, as found in chapter 10, article VIII. Each final plat shall have depicted thereon applicable boundaries of all flood zones as provided in the latest edition of the federal insurance rate maps.

(Code 1993, § 70-41; Ord. No. 2001-19, § 2, 1-7-2002)

Sec. 40-72. Building setback requirements.

No plat of any subdivision shall be approved unless building setback lines are established therein in accordance with the city's applicable regulations, as found in chapter 48.

(Code 1993, § 70-42; Ord. No. 2001-19, § 2, 1-7-2002)

State law reference— Building lines, V.T.C.A., Local Government Code § 214.131 et seq.

Sec. 40-73. Reserve tracts.

Reserve tracts are those individual parcels of land created within a platted subdivision which are not divided into residential or commercial lots, but are established to accommodate some specific purpose such as a private recreational facility, school or church site, or site for utility facilities or other activities or land uses for which division into lots is not appropriate. Since the use of reserve tracts may not be completely determined by the subdivider or developer at the time plats are prepared and submitted to the city, these reserve tracts are often established as unrestricted reserves that allows maximum flexibility in the determination of the ultimate use planned for such properties.

(1) *Street access.* Reserves established on any subdivision plat shall have frontage on and be immediately adjacent to at least one street, with such frontage being not less than 60 feet in width.

(2) *Identification and designation.* All reserves shall be labeled and identified on the plat, and a description of the use intended for such reserve, if known, shall be noted. If the use of the reserve is not restricted for any specific use, the reserve shall be identified and noted as being "unrestricted." All reserves are to be identified and designated by alphabetical letters, not numbers, along with an indication as to the total acreage of such reserves that shall be shown within each reserve boundary.

(3) *Special purpose reserves.* Notwithstanding any other provision contained in this article or in chapter 48, special purpose reserves may be created which do not otherwise comply with minimum lot size requirements. The term "special purpose reserves" shall mean tracts restricted to a use beneficial to the public or to the owners of lots within a subdivision, including but not limited to, tracts housing facilities for utilities, common area amenities such as parks, playgrounds and greenbelts, pipeline regulator stations, and community signs, The planning and zoning commission shall be authorized to waive requirements contained in this article which are, because of the nature of the restricted reserve's use, deemed by the planning and zoning commission as inapplicable or inappropriate. For example, the planning and zoning commission would be authorized to waive the requirement that sanitary sewer service be available to a special purpose reserve that is restricted to the housing of a subdivision identification sign. Any special purpose reserve shall be identified on the plat as such, and shall contain an appropriate notation of the restrictions applicable thereto.

(Code 1993, § 70-43; Ord. No. 2001-19, § 2, 1-7-2002)

Sec. 40-74. Lots, general provisions.

The purpose of this section is to provide general overall guidelines for the establishment of individual lots within a subdivision.

(1) *General lot design, arrangement, layout.* The general lot design within any subdivision shall be based upon the concept that such lots are created and established as undivided tracts of land and that purchasers of such lots can be assured that these tracts of land meet the applicable regulations, including those found in chapter 48, which are based upon the following basic criteria:

a. That the lot is of sufficient size and shape to accommodate easements for all public and private utility services and facilities to adequately serve any residential dwelling unit constructed thereon.

b. That the lot is of sufficient size and shape and is so located that direct vehicular access is provided from a public street or through an approved private street and that the required number of off-street parking spaces can be provided on the lot without encroachment within any adjacent public or private street right-of-way.

(2) *Lot shapes.* Lots shall be designed, so far as possible, with side lot lines being at right angles or radial to any adjacent street right-of-way line. Where all lots are either perpendicular and at right

angles or radial to adjacent street rights-of-way, a suitable notation shall be placed upon the plat in lieu of lot line bearings.

(3) *Key or flag shaped lots.* For the purposes of this section, a key or flag shaped lot shall mean a lot having gross disparities in width between side lot lines, sometimes resembling a flag on a flag pole, a key, or some other lot shape of comparable irregularity. Key or flag shaped lots shall not be prohibited if otherwise in compliance with the minimum lot size requirements of this chapter and other applicable regulations of the city and provided that no portion of any such lot is less than 50 feet in width.

(4) *Street access limitations.* Rear and side vehicular driveway access from lots to adjacent streets designated as major thoroughfares or any other public street which carries a traffic volume where additional vehicular driveways would create a traffic hazard or impede the flow of traffic, shall not be approved and such access restriction shall be noted directly upon the plat and adjacent to the lots in question.

(5) *Lot and block identification.* All blocks established in a subdivision shall be designated on the plat, and shall be numbered consecutively throughout the entire subdivision. Lots established within blocks shall also be numbered consecutively within the block. Lot numbering shall be cumulative throughout the subdivision if the numbering system continues from block to block in a uniform manner.

(Code 1993, § 70-44; Ord. No. 2001-19, § 2, 1-7-2002)

Sec. 40-75. Minimum lot sizes.

Lot sizes shall comply with minimum requirements set forth in the applicable ordinances of the city, including chapter 50.

(Code 1993, § 70-45; Ord. No. 2001-19, § 2, 1-7-2002)

Sec. 40-76. Utilities.

Adequate provision for all utilities shall be provided to the entire subdivision. All distribution and service lines of single-phase electrical, telephone, television, and other wire-carrier type utilities shall be underground. Transformers, amplifiers, or similar devices associated with the underground lines shall be located upon the ground or below ground level. Where the underground placement of such facilities is not a standard practice of the utility involved, the subdivider or developer shall make arrangements with the applicable utility for payment of all costs associated with the non-standard installation. All electrical transmission and distribution (other than single phase), if installed above ground, shall be located along the perimeter of the overall subdivision. All utility installations shall comply with the City of Tomball Minimum Construction Standards for Community Improvements.

(Code 1993, § 70-46; Ord. No. 2001-19, § 2, 1-7-2002; Ord. No. 2014-04, § 2(70-46), 2-3-2014)

Sec. 40-77. Drainage.

Drainage facilities shall be designed and constructed in accordance with all federal, state, and local rules and regulations, including the City of Tomball Minimum Construction Standards for Community Improvements.

(Code 1993, § 70-47; Ord. No. 2001-19, § 2, 1-7-2002)

Sec. 40-78. Sanitary sewer.

Sanitary sewer facilities shall be designed and constructed in accordance with all federal, state, and local rules and regulations, including the City of Tomball Minimum Construction Standards for Community Improvements. Each lot within a proposed subdivision shall be connected to the sanitary sewer system of the city if any point within such subdivision is located within 1,000 feet of the city's collection system therefor. No septic tank system shall be permitted within any newly platted subdivision when connection to the city's sanitary sewer system is required under this section.

(Code 1993, § 70-48; Ord. No. 2001-19, § 2, 1-7-2002)

Sec. 40-79. Water.

Facilities for the provision of potable water to all areas of the proposed subdivision shall be designed and constructed in accordance with the "City of Tomball Minimum Construction Standards for Community Improvements." Each lot within a proposed subdivision shall be connected to the potable water distribution system of the city if any point within such subdivision is located within 1,000 feet of the city's distribution system therefor. No water well shall be permitted within any newly platted subdivision if potable water is available from the city's system as provided in this section.

(Code 1993, § 70-49; Ord. No. 2001-19, § 2, 1-7-2002)

Sec. 40-80. Monuments and markers.

(a) Concrete monuments, six inches in diameter and 24 inches long, shall be placed on all boundary corners, block corners, curve points, and angle points. A copper pin one-quarter inch in diameter embedded three inches in the monument shall be placed at the exact intersection point on the monument. The monuments shall be set at such an elevation that they will not be disturbed during construction, and the top of the monument shall not be less than 12 inches below the finish ground level.

(b) Lot markers shall be five-eighths inch or greater reinforcing bar, 24 inches long, or approved equal, and shall be placed at all lot corners flush with the ground, or below ground if necessary in order to avoid being disturbed.

(c) Where no benchmark is established or can be found within 300 feet of the boundary of the subdivision, such benchmark shall be established to the latest edition of the U.S. Coast and Geodetic Survey datum. The benchmark shall be established upon a permanent structure, or may be set as a monument and shall be readily accessible and identifiable on the ground.

(Code 1993, § 70-50; Ord. No. 2001-19, § 2, 1-7-2002)

Secs. 40-81—40-103. Reserved.

FOOTNOTE(S):

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State Law reference— Standards for approval of plats, V.T.C.A., Local Government Code § 212.010. (Back)

ARTICLE IV. SPECIAL REQUIREMENTS

Sec. 40-104. Dedication statements and certificates.

Sec. 40-105. Restrictive covenants.

Sec. 40-106. Construction plans.

Sec. 40-107. Inspection of construction.

Sec. 40-108. Guarantee of performance.

Sec. 40-109. Maintenance of dedicated improvements.

Sec. 40-104. Dedication statements and certificates.

All dedication statements and certificates shall be made a part of the final plat drawing and shall include, but not be limited to, the statements, the general form and content of which are provided below:

(1) *Owner's acknowledgment.*

THE STATE OF TEXAS	§
	§
COUNTY OF HARRIS	§

I (or we), (name of owner or owners) acting by and through (name and title of officer) being officers of (name of company or corporation), owner (or owners) in this section after referred to as owners (whether one or more) of the (number of acres) acre tract described in the above and foregoing plat of (name of subdivision or development), do hereby make and establish said subdivision of said property according to all liens, dedications, restrictions and notations on said plat and hereby dedicate to the use of the public forever, all streets, alleys, parks, watercourses, drains, easements, and public places shown thereon for the purposes and considerations therein expressed; and do hereby bind myself (or ourselves), my (or our) heirs, successors and assigns to warrant and forever defend the title to the land so dedicated.

FURTHER, owners have dedicated and by these presents do dedicate to the use of the public for public utility purposes forever an unobstructed aerial easement five feet in width from a plane 20 feet above the ground level upward, located adjacent to all public utility easements shown hereon.

Additional paragraphs to be added as appropriate and as follows:

(When estate subdivisions are created which will not be required to have cement concrete streets, gutters, or storm sewers.)

FURTHER, owners do hereby covenant and agree that all of the property within the boundaries of this plat shall be restricted to provide that drainage structures under private driveways shall have a net drainage opening area of sufficient size to permit the free flow of water without backwater and in no instance have a drainage opening of less than one

and three quarters square feet (18-inch diameter) with culverts or bridges to be provided for all private driveways or walkways crossing such drainage facilities.

(When plat contains natural drainageways such as bayous, creeks, gullies, ravines, draws, or drainage ditches.)

FURTHER, owners do hereby dedicate to the public a strip of land 15 feet wide on each side of the centerline of any and all bayous, creeks, gullies, ravines, draws, sloughs, or other natural drainage courses located and depicted upon in said plat, as easements for drainage purposes, giving the City of Tomball, Harris County, or any other governmental agency, the right to enter upon said easement at any and all times for the purpose of construction and maintenance of drainage facilities and structures.

FURTHER, owners do hereby covenant and agree that all of the property within the boundaries of this plat and adjacent to any drainage easement, ditch, gully, creek, or natural drainageway shall hereby be restricted to keep such drainageways and easements clear of fences, buildings, planting, and other obstructions to the operation and maintenance of the drainage facility and that such abutting property shall not be permitted to drain directly into this easement, except by means of an approved drainage structure.

(2) *Execution of owner's acknowledgment.*

a. *When owner is an individual or individuals.*

WITNESS my (or our) hand in the City of Tomball, Texas, this (number) day of (month), (year).

	_____ (Signature of owner or owners) (Names to be printed)

b. *When owner is a company or corporation.*

IN TESTIMONY WHEREOF, the (name of company) has caused these presents to be signed by (name of president), its president, thereunto authorized, attested by its secretary (or authorized trust officer), (name of secretary or authorized trust officer), and its common seal hereunto affixed this (number) day of (month), (year).

	(Name of company)
	By: _____ (Signature of president) President
ATTEST:	
By: _____ (Signature of	

secretary or authorized trust officer) Title	
(Affix cor- porate seal)	

c. *Notary acknowledgement.* All owners' signatures shall be acknowledged by a notary public.

(3) *Lienholder's acknowledgment and subordination statement.* Note: holders of all liens against the property being platted must execute the final plat or prepared as separate instruments which shall be filed for record with the plat.

I, (or we), (name of mortgagee or names of mortgagees), owner and holder (or owners and holders) of a lien (or liens) against the property described in the plat known as (name of plat), said lien (or liens) being evidenced by instrument of record in Volume _____, Page _____, (or Film Code No. _____) of the Mortgage Records of (name of county in which the plat is located), Texas, do hereby in all things subordinate our interest in said property to the purposes and effects of said plat and the dedications and restrictions shown in this section to said plat and I (or we) hereby confirm that I am (or we are) the present owner (or owners) of said lien (or liens) and have not assigned the same nor any part thereof.

	By: _____ (Signature of lien- holder) (Name to be printed)

Note: All lienholder signatures shall be acknowledged by a notary public.

(4) *Notary public acknowledgment for all signatures.*

THE STATE OF TEXAS	§
	§
COUNTY OF HARRIS	§

BEFORE ME, the undersigned authority, on this day personally appeared (names of persons signing the plat, owners, corporation officers, and lienholders, (corporation title, if appropriate), known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and considerations therein expressed (all for corporation, "and in the capacity therein and in this section stated, and as the act and deed of said corporation").

GIVEN UNDER MY HAND AND SEAL OF OFFICE this (number) day of (month), (year).

	_____ (Signature of notary public)
	Notary Public In and For the State of Texas
	My Commission Expires:_____
(Affix notary seal)	

(5) *Certificate for civil engineer or surveyor.*

I, (name of civil engineer or surveyor), am authorized (or registered) under the laws of the State of Texas to practice the profession of civil engineering (or surveying) and hereby certify that the above subdivision is true and correct; was prepared from an actual survey of the property made under my supervision on the ground; that all boundary corners, angle points, points of curvature, and other points of reference have been marked with iron (or other suitable permanent metal) pipes or rods having an outside diameter of not less than three-quarter inch and a length of not less than three feet; and that the plat boundary corners have been tied to the nearest survey corner.

	_____ (Signature of registered public surveyor) (Print name)
	Texas Registration No._____
	(Affix notary seal)

(6) *Certificate for planning and zoning commission.*

This is to certify that the planning and zoning commission of the city has approved this plat and subdivision of (name of subdivision) in conformance with the laws of the state and the ordinances of the city as shown hereon and authorized the recording of this plat this (number) day of (month), (year).

	By: _____ (Signature of chairman or vice chairman) Chairman or Vice Chairman
	By: _____ (Signature of secretary) Secretary

(7) *County clerk filing acknowledgment statement.*

I, (name of county clerk), County Clerk of Harris County, Texas, do hereby certify that the within instrument with its certificate of authentication was filed for registration in my office on (date and month), (year), at (time) o'clock (a.m. or p.m.), and in Volume (number), Page (number, or when applicable Film Code numbers) of the map records of Harris County for said County. Witness my hand and seal of office, at Harris County, Texas, the day and date last above written.

	_____ Ex Officio Clerk of Harris County, Texas Chairman or Vice Chairman
	By:
	Deputy

(8) *Encumbrances certificate.* (Preliminary Plats) Note: The following paragraph is to be placed on the face of all preliminary plats to be filed separately with the materials required to be submitted with plats requesting preliminary approval.

I, (name of applicant or person who prepared the plat), do hereby certify that all existing encumbrances, such as various types of easements both public and private, fee strips, and all significant topographical features which would affect the physical development of the property illustrated on this plat are accurately identified and located and further certify that this plat represents all of the contiguous land which the (owner of subdivider) owns or has a legal interest in. (In those instances where the owner or subdivider owns or has a legal interest in any adjacent property, this paragraph must be modified to reflect the extent of such ownership and a boundary description of the land involved must be provided.)

	_____ (Signature of certified public surveyor who prepared the plat) (Name to be printed)

(9) *Vacation of subdivision plat.*

THE STATE OF TEXAS	§
	§
COUNTY OF HARRIS	§

I (or we), (name of owner or owners if individuals) or (name of president and secretary or authorized trust officer of a company or corporation), being the sole owner (owners) and proprietor of the following described property in the City of Tomball, Texas, to wit:

(Provide legal description of the property including, but not limited to, the acreage, the name of the recorded subdivision, the name of the Survey and Abstract Number, and recording references)

do hereby desire and declare that said plat, subdivision and dedication thereon be vacated and canceled so as to convey all of said platted property to acreage tracts as same existed before such property was platted, subdivided, and recorded.

(At this point any rights-of-way, easements, or any other feature established in the subdivision being vacated which will not be canceled as a result of this vacation action should be described.)

(10) *Amending plat certificates.* Note: the following certificates and acknowledgments are required to be placed upon the face of all amended plats:

I, (name of civil engineer or surveyor), hereby certify that the following corrections were necessary to eliminate errors which appear on the plat of (name of subdivision), recorded on (date and month), (year), in Volume (number), Page (number) (or when applicable Film Code numbers) of the map records of Harris County, Texas:

(Provide brief explanation of corrections required.)

	_____ (Signature of registered public surveyor) (Print name)
	Texas Registration No._____

	(Affix seal)

I, (we), (name[s] or owner[s]), owners(s) of the property directly affected by this amending plat, being lot(s) _____ out of the block(s)_____ as indicated hereon, do hereby consent to this amending plat for the purposes in this section expressed.

	_____ (Signature of owner[s]) (Print name)

Note: All owners' signatures shall be acknowledged by a notary public.

APPROVED BY THE CITY OF TOMBALL, TEXAS PLANNING AND ZONING COMMISSION on (date, month, and year).

_____ (Signature of chairman or vice chairman) (Print name) Chairman or Vice Chairman	_____ (Signature of secretary) (Print name) Secretary
(Affix Commission Seal)	

(Code 1993, § 70-61; Ord. No. 2001-19, § 2, 1-7-2002)

Sec. 40-105. Restrictive covenants.

An executed and notarized copy of the final restrictive covenants to govern the nature and use of property within the subdivision shall be submitted. In the public interest, the planning and zoning commission shall require that such restrictive covenants, if any, be filed simultaneously with the final plat and be executed by all parties executing the final plat other than the city. The city shall file for recording with the county clerk of either county, as applicable, the original copy of such restrictive covenants, if any, concurrently with the filing of the plat in accordance with section 40-32. A certified copy of the original restrictions, if any, shall be retained by the city.

(Code 1993, § 70-62; Ord. No. 2001-19, § 2, 1-7-2002)

Sec. 40-106. Construction plans.

Construction plan and profile sheets for all subdivision improvements, public or private, shall be submitted with the application for final plat approval. All such plans and profile sheets shall be signed and

sealed by a state registered professional engineer. The approval of the final plat shall be contingent upon approval of construction plans by the city engineer or his designee. Further, the approval of a final plat shall be contingent upon the construction of such improvements in accordance with such approved construction plans. Construction plans shall be submitted in accordance with the provisions of the City of Tomball Minimum Construction Standards for Community Improvements.

(Code 1993, § 70-63; Ord. No. 2001-19, § 2, 1-7-2002)

Sec. 40-107. Inspection of construction.

The city engineer shall be required to fully inspect any and all phases of the construction of improvements for each subdivision. The subdivider, or his contractor, shall maintain daily contact with the city engineer during construction of improvements. No sanitary sewer, water, or storm sewer pipe shall be covered without written approval of the city engineer, no flexible base material, subgrade material, or stabilization shall be applied to the street subgrade without said written approval, and no concrete shall be poured or asphaltic surface applied to the base without said written approval. The city engineer may at any time cause any construction, installation, maintenance, or location of improvements to cease when, in his judgment, the requirements of this chapter or the standards and specifications as in this section before provided have been violated, and may require such reconstruction or other work as may be necessary to correct any such violation. The subdivider shall engage a registered professional engineer who shall be in responsible charge of all phases of the design and construction of the required public improvements. For the purposes of this section, the term "city engineer" shall include his designee.

(Code 1993, § 70-64; Ord. No. 2001-19, § 2, 1-7-2002)

Sec. 40-108. Guarantee of performance.

No subdivision plat shall be filed of record with the county clerk of either county and no building permit, or any water, sewer, plumbing, or electrical permit shall be issued by the city to the owner or any other person with the respect to any property in any subdivision until the earlier of:

(1) Such time as the subdivider or developer of such subdivision has complied with all provisions of this article and such conditions of the planning and zoning commission applicable to the final plat regarding installation of all required improvements and for which required improvements the subdivider or developer has received acceptance by the city council for the start of the one-year maintenance period as described in section 40-109

(2) Such time as an escrow deposit sufficient to pay for 120 percent of the estimated cost of such improvements as determined by the city engineer computed on a private commercial rate basis has been made with the city secretary accompanied by an agreement by the subdivider or developer authorizing the city to make such improvements at prevailing private commercial rates or have the same made by a private contractor and pay for the same out of the escrow deposit, should the subdivider or developer fail or refuse to install the required improvements within the time stated in such written agreement. Such deposit may be used by the subdivider or developer as progress payments as the work progresses upon written certification by the city engineer that work for which payment is sought has been completed and that sufficient funds remain in the escrow account to complete the work. Any and all funds remaining from any such escrow deposit upon completion of the work and acceptance thereof by the city council shall be promptly released by the city to the depositor; or

(3) Such time as the subdivider or developer files a corporate surety bond with the city secretary executed by a surety company licensed to do business in the state and acceptable to the city, in an amount equal to 120 percent of the cost of installation of all required improvements as determined by the city engineer computed on a private commercial rate basis, guaranteeing the installation of such required improvements by the subdivider or developer within the time stated in the bond, which time shall be fixed by the planning and zoning commission.

(Code 1993, § 70-65; Ord. No. 2001-19, § 2, 1-7-2002)

Sec. 40-109. Maintenance of dedicated improvements.

Disapproval of a plat shall be deemed a refusal to accept the offered dedications shown thereon. Approval of the plat shall not impose any duty upon the city concerning the maintenance of improvements of any dedicated parts indicated thereon until the city council, after inspection and recommendation by the city engineer, shall have accepted same by resolution expressing such acceptance. The subdivider or developer shall maintain all such improvements for a period of one year following such acceptance by the city council; however, such one year of required maintenance shall not begin until there has been filed with the city secretary either a maintenance bond, executed by a surety company licensed to do business in the state and acceptable to the city council, in an amount equal to 100 percent of the cost of installation of such improvements, warranting that said improvements will render satisfactory operation for such one-year period, or a cash bond, in an amount equal to 100 percent of the cost of installation of such improvements, likewise warranting that said improvements will render satisfactory operation for such one-year period.

(Code 1993, § 70-66; Ord. No. 2001-19, § 2, 1-7-2002)

Chapter 41 RESERVED

Chapter 42 TAXATION [1]

ARTICLE I. - IN GENERAL

ARTICLE II. - HOTEL OCCUPANCY TAX

ARTICLE III. - BINGO GROSS RECEIPTS TAX

ARTICLE IV. - SALES AND USE TAX

ARTICLE V. - CHARITABLE ORGANIZATION EXEMPTION

FOOTNOTE(S):

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State Law reference— V.T.C.A., Tax Code ch. 1 et seq.; finances, V.T.C.A., Local Government Code ch. 101 et seq. (Back)

ARTICLE I. IN GENERAL

Sec. 42-1. Continuation of tax on certain business personal property.

Secs. 42-2—42-20. Reserved.

Sec. 42-1. Continuation of tax on certain business personal property.

All of that certain business personal property described in the state constitution, article VIII, section 1-j, shall be fully taxable in the city beginning January 1, 1990.

(Code 1993, § 74-1; Ord. No. 89-18, 12-4-1989)

Secs. 42-2—42-20. Reserved.

ARTICLE II. HOTEL OCCUPANCY TAX [2]

Sec. 42-21. Definitions.

Sec. 42-22. Levy of tax; rate; exception.

Sec. 42-23. Collection.

Sec. 42-24. Reports.

Sec. 42-25. Rules and regulations.

Sec. 42-26. Penalties.

Sec. 42-27. Management and administration.

Secs. 42-28—42-57. Reserved.

Sec. 42-21. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Consideration means the cost of the room, sleeping space, bed or other facilities in a hotel and shall not include the cost of any food served or personal services rendered to the occupant of such room or space not related to the cleaning and readying of such room or space for occupancy, and shall not include any tax assessed for occupancy thereof by any other governmental agency.

Hotel means a building or facility in which members of the public may obtain sleeping accommodations for consideration. The term "hotel" includes a hotel, motel, tourist home, tourist house, tourist court, lodginghouse, inn, roominghouse, bed and breakfast or other building where space is furnished for consideration. The term "hotel" does not include a hospital, sanitarium, nursing home or a dormitory or housing facility owned or leased and operated by an institution of higher education or a private or independent institution of higher education, as defined by the Texas Education Code, used by the institution for the purpose of providing sleeping accommodations for persons engaged in an educational program or activity at the institution.

State law reference— Similar provisions, V.T.C.A., Tax Code § 156.001(1); definition adopted, V.T.C.A., Tax Code § 351.001(5).

Occupancy means the use, possession, or right to use or possess any room, or sleeping space or facility in a hotel under any lease, concession, permit, right of access, license, contract or agreement.

Occupant means anyone who, for a consideration, for any purpose, uses, possesses, or has a right to use or possess any room, or sleeping space or facility in a hotel under any lease, concession, permit, right of access, license, contract or agreement.

Permanent resident means any occupant who has or shall have the right to occupancy of any room, or sleeping space or facility in a hotel for at least 30 consecutive days, so long as there is no interruption of payment for the period.

Person means any individual, partnership, company, corporation, association, or other legal entity owning, operating, managing or controlling any hotel.

Quarterly period means the regular calendar quarters of the year, the first quarter being the months of January, February and March; the second quarter being the months of April, May and June; the third quarter being the months of July, August and September; and the fourth quarter being the months of October, November and December.

(Code 1993, § 74-26; Ord. No. 2006-16, § 1, 11-6-2006)

Sec. 42-22. Levy of tax; rate; exception.

(a) There is hereby levied a tax upon the occupant of any room or space furnished by any hotel within the city where such costs of occupancy is at the rate of $2.00 or more per day, such tax to be equal to seven percent of the consideration paid by the occupant of such room, space or facility to such hotel, exclusive of other occupancy taxes imposed by other governmental agencies, effective as of May 1, 2003.

(b) The person required to collect the tax set forth in subsection (a) of this section may deduct and withhold from the person's payment to the city, as reimbursement for the cost of collecting the tax, an amount not to exceed one percent of the tax due and required to be reported to the city. If taxes due under this article are not paid to the city within the time required, or if the person required to file a report fails to file the report when due, the person forfeits the claim to the reimbursement that could have been taken if the tax had been paid or the report filed when due.

(c) No tax shall be imposed under this section upon a permanent resident.

(d) No tax shall be imposed under this section upon an occupant of any room or space rented from a corporation or association organized and operated exclusively for religious, charitable or educational purposes, if no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(e) All revenue derived from the occupancy tax imposed in subsection (a) of this section, except the one percent which may be withheld under subsection (b) of this section, will be used only for those purposes permitted by law.

(Code 1993, § 74-27; Ord. No. 2006-16, § 1, 11-6-2006)

Sec. 42-23. Collection.

Every person owning, operating, managing or controlling any hotel shall collect the tax imposed in section 42-22 for the city. The failure of the person owning, operating, managing or controlling said hotel to collect sufficient monies from occupants to satisfy said tax shall not excuse the obligation to pay said tax to the city. Any person who receives or collects hotel tax from an occupant shall hold the amount so collected in trust for the benefit of the city and is liable to the city for the full amount collected plus any accrued penalties and interest on the amount collected.

(Code 1993, § 74-28; Ord. No. 2006-16, § 1, 11-6-2006)

Sec. 42-24. Reports.

On the last day of the month following each quarterly period, every person required in section 42-23 to collect the tax imposed in this article on the city's behalf shall file a report with the finance director showing the consideration paid for all occupancies in the preceding quarter, the amount of the tax due on

such occupancies, and any other information as the finance director may reasonably require. Such person shall pay the amount of tax due from occupants during the period of the report at the time of filing the report. There shall also be furnished to the city finance director, at the time of such report and payment, a copy of the state hotel occupancy tax reports for the corresponding period.

(Code 1993, § 74-29; Ord. No. 2006-16, § 1, 11-6-2006)

Sec. 42-25. Rules and regulations.

The finance director shall have the power to make such rules and regulations as are necessary to effectively collect the tax levied in this article, and shall upon reasonable notice have access to books and records necessary to enable the finance director to determine the correctness of any report filed as required by this article and the amount of taxes due under the provisions of this article.

(Code 1993, § 74-30; Ord. No. 2006-16, § 1, 11-6-2006)

Sec. 42-26. Penalties.

(a) If any person shall fail to collect the tax imposed in this article, or shall fail to file a report as required in this article, or shall fail to pay to the city the tax as imposed in this article when such report for payment is due, or shall file a false report, then such person shall be deemed guilty of a misdemeanor and upon conviction be punished by a fine as provided in section 1-14. In addition, such person who fails to remit the tax imposed by this article within the time required shall pay a fee of ten percent of the total amount of the tax owed, and after the first 30 days shall pay an additional five percent of the total amount of the tax owed. Delinquent taxes shall draw daily interest at the rate of ten percent per annum beginning 30 days from the date due on the tax imposed by this article.

(b) The attorney acting for the city may bring suit against a person who is required to collect the hotel occupancy tax and pay the collections over to the city, and who has failed to file a tax report or pay the tax when due, to collect the delinquent taxes, or to enjoin the person from operating a hotel in the city until the tax is paid or the report filed, as applicable, as provided by a court order. In addition to the amount of any tax owed, the person is liable to the city for reasonable attorney fees, the costs of an audit conducted as determined by the city using a reasonable rate if the tax has been delinquent for at least two complete city fiscal quarters at the time the audit is conducted.

(Code 1993, § 74-31; Ord. No. 2006-16, § 1, 11-6-2006)

Sec. 42-27. Management and administration.

(a) All revenue generated by the hotel occupancy tax shall be held by the city in a separate account established for that purpose and shall not be co-mingled with any other money or maintained in any other account.

(b) Revenue derived from the hotel occupancy tax shall be expended in a manner that directly enhances and promotes tourism and the convention and hotel industry. Revenue generated by the hotel occupancy tax shall not be used for general revenue purposes or to pay for governmental expenses that are not directly related to increasing tourism or promoting the convention and hotel business.

(c) As authorized by V.T.C.A., Tax Code § 351.101(c), the city council by contract may delegate to a person, including another governmental entity or private organization, the management or supervision of programs and activities funded with revenue from the hotel occupancy tax; otherwise, the city council retains administrative control over the revenue generated by the hotel occupancy tax and retains supervision of programs and activities funded with such revenue.

(d) The tourism advisory committee, hereby referred to as the "committee" is created. The committee shall recommend to city council those activities, programs, events and policies that will best promote tourism and the convention and hotel industry within the city. Such activities, programs, events and

policies, if approved by the city council, would be funded all or in part by revenue generated by the hotel occupancy tax adopted by the city pursuant to the provisions of V.T.C.A., Tax Code ch. 351. The committee shall be organized under the following terms and conditions:

(1) The committee shall consist of nine members who shall be recommended by the mayor and approved by the city council to serve three-year staggered terms. The initial term for positions one, four and seven will be one year; positions two, five, and eight will be two years; and positions three, six and nine will be three years. Members serve at the will and pleasure of the city council, and may be removed without cause at any time by a majority vote of the city council. Members will become ineligible to serve if such member fails to meet one of the qualifications as described in subsection (7) of this section. Unless a member is removed, becomes ineligible, or resigns, such member will continue to serve until a new member has been recommended by the mayor and approved by city council. The mayor shall designate a chairperson from among the appointees who shall preside over all meetings. The chair shall retain the right to vote and make motions as a member of the committee. Any vacancies shall be filled by recommendation of the mayor with the city council approval.

(2) The committee shall meet at least once quarterly during a fiscal year. The committee may meet in special session upon call by the chair, vice-chair, or the city manager. Meetings shall be held in council chambers, or such other public place as approved by the committee. Notice of every meeting (of the committee shall be posted in accordance with the Texas Open Meetings Act, V.T.C.A., Government Code ch. 551). The committee shall elect a vice-chair at its first meeting. The vice-chair shall preside over meetings when the chair is unable to attend. The city secretary, or the city secretary's designee, shall review and maintain the minutes of committee meetings and shall sign minutes of meetings with the chair or vice-chair once approved by the majority of the committee.

(3) The committee may adopt other rules and regulations for the conduct of its meetings. The chair of the committee shall present any recommendations from the committee to the city council.

(4) The city manager, or the city manager's designee, is an ex officio (nonvoting) member of the committee.

(5) The committee shall promulgate forms for use by persons or entities requesting hotel occupancy tax funds for use in qualifying events or projects. In addition to furnishing other information that may be required, such forms shall require the applicant to state in writing how the requested expenditure will enhance and promote tourism and the convention and hotel industry in the city.

(6) The committee shall use its best efforts to study proposed use of funds generated by the hotel occupancy tax and shall recommend allocation of all funds as required by V.T.C.A., Tax Code § 351.103. From time to time, the committee shall recommend activities, events, and programs to the city council that will best promote the city as a convention site and tourist destination. To assist it in achieving its goals, the committee may communicate with other cities and examine their policies and practices regarding conventions and tourism. Members of the committee may attend workshops and studies created for the purpose of assisting cities develop convention and visitor incentives.

(7) Members of the committee shall possess at least one of the following qualifications:

a. Positions one, two and three must reside within the city limits, provided, however, that no more than three committee members may qualify solely under this subsection;

b. Positions four, five and six must work for, own, or be an officer or director of a business, other than a hotel or motel, with business locations within the city limits, provided, however, that no more than three committee members may qualify solely under this subsection;

c. Positions seven, eight and nine must work for, own, or be an officer of a hotel or motel located in the city limits, who may either be a resident or nonresident of the city, provided, however, that no more than three committee members may qualify solely under this subsection.

(8) No member, or an organization or entity for which a member has an ownership interest or is serving on the board of such organization or entity, shall be eligible for hotel occupancy tax financial assistance for any activities, programs, or events, during the term of such member or for a period of two years after the end of that member's term. No person shall be eligible to serve on the committee who has a spouse, child or stepchild who owns or is employed by or is serving on the board of any organization or entity which is applying for or may apply for hotel occupancy tax financial assistance for any activities, program, or events.

(9) A majority of the committee members shall constitute a quorum. Once a request for hotel occupancy tax financial assistance has been filed, the committee shall indicate in a written report to the city council whether it does or does not recommend the request within 60 days. The report shall also describe how the request complies with any one or more of the statutory categories for expenditures set out in V.T.C.A., Tax Code § 351.101(a)(1) through (8). A copy of the request accompanied by the report of the committee shall be delivered to city council for a determination on whether the project is related to the promotion of tourism and the convention and hotel industry within the city limits. The city council shall not be bound by the recommendation of the committee in determining whether the project should be approved.

(e) Each budget year, the city council shall allocate funds for use by the committee as a line item in the following fiscal year based upon anticipated administrative costs and estimated costs for committee member education and other matters. Any expenditure of funds by members of the committee must be authorized in writing in advance by the city manager. Any member receiving funds under this subsection shall keep records of any and all expenditures and shall deliver copies of such records supported by receipts or invoices to the city manager.

(Ord. No. 2010-21, § 2(74-32), 11-1-2010)

Secs. 42-28—42-57. Reserved.

FOOTNOTE(S):

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State Law reference— Hotel occupancy tax, V.T.C.A., Tax Code ch. 156; municipal hotel occupancy taxes, V.T.C.A., Tax Code ch. 351. (Back)

ARTICLE III. BINGO GROSS RECEIPTS TAX [3]

Sec. 42-58. Construction and administration.

Sec. 42-59. Levy of tax.

Secs. 42-60—42-76. Reserved.

Sec. 42-58. Construction and administration.

For the purposes of this article, the construction of all words and phrases, and the administration and collection of all taxes levied in this article, shall be governed by the provisions of V.T.C.A., Occupations Code ch. 2001, and such provisions as may from time to time be amended.

(Code 1993, § 74-51; Ord. No. 89-09, § 1(22.5-41), 7-10-1989)

Sec. 42-59. Levy of tax.

There is hereby levied a one percent gross receipts tax on the conduct of bingo games within the city.

(Code 1993, § 74-52; Ord. No. 89-09, § 1(22.5-40), 7-10-1989)

State law reference— Local share of prize, V.T.C.A., Occupations Code § 2001.503.

Secs. 42-60—42-76. Reserved.

FOOTNOTE(S):

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State Law reference— Bingo Enabling Act, V.T.C.A., Occupations Code ch. 2001. (Back)

ARTICLE IV. SALES AND USE TAX [4]

Sec. 42-77. Levy of tax.

Sec. 42-78. Creation of industrial development corporation.

Sec. 42-79. Implementation.

Sec. 42-80. Repeal of telecommunications sales tax exemption.

Secs. 42-81—42-103. Reserved.

Sec. 42-77. Levy of tax.

There is hereby levied by the city a sales and use tax of one-half of one percent within the city in accordance with and pursuant to V.T.C.A., Local Government Code ch. 501 et seq., the Development Corporation Act (the "Act"), for the benefit of a city industrial development corporation, to be used to pay the costs of projects authorized by the Act, including, but not limited to, land, buildings, equipment, facilities and improvements found by the board of directors of the city's industrial development corporation to:

(1) Be required or suitable for use for professional and amateur (including children's) sports, athletic, entertainment, tourist, convention and public park purposes and events, including

stadiums, ball parks, auditoriums, amphitheaters, concert halls, learning centers, parks and park facilities, open space improvements, municipal buildings, museums, exhibition facilities and related store, restaurant, concession and automobile parking facilities, related area transportation facilities and related roads, streets, and water and sewer facilities and other related improvements that enhance any of those items;

(2) Promote or develop new or expanded business enterprises, including a project to provide public safety facilities, streets and roads, drainage and related improvements, demolition of existing structures, general municipally-owned improvements, as well as any improvements or facilities that are related to any of those projects and any other project that the board in its discretion determines promotes or develops new or expanded business enterprises; or

(3) Pay the principal of, interest on, and other costs relating to bonds or other obligations issued by the industrial development corporation to pay the costs of the projects or to refund bonds or other obligations issued to pay the costs of projects.

(Code 1993, § 74-71; Ord. No. 94-03, § 2, 2-21-1994)

Sec. 42-78. Creation of industrial development corporation.

The city hereby authorizes the creation of the city's industrial development corporation, in accordance with the Development Corporation Act of 1979 and the authorization given by the voters at the January 15, 1994, election.

(Code 1993, § 74-72; Ord. No. 94-03, § 3, 2-21-1994)

Sec. 42-79. Implementation.

The city manager, assistant city manager and the city secretary are hereby authorized to assist and cooperate with the office of the comptroller of the state in the implementation of this article and the levy and collection of such sales and use tax.

(Code 1993, § 74-73; Ord. No. 94-03, § 4, 2-21-1994)

Sec. 42-80. Repeal of telecommunications sales tax exemption.

Pursuant to V.T.C.A., Tax Code § 321.210, the city repeals the exemption of telecommunications services from the city's sales and use tax.

(Ord. No. 2009-17, § 1, 6-15-2009)

Secs. 42-81—42-103. Reserved.

FOOTNOTE(S):

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State Law reference— Municipal sales and use tax, V.T.C.A., Tax Code ch. 321. (Back)

ARTICLE V. CHARITABLE ORGANIZATION EXEMPTION

Sec. 42-104. Established regulations.

Sec. 42-104. Established regulations.

(a) *Definitions.* The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Local charitable organization means an organization that:

(1) Is a chapter, subsidiary, or branch of a statewide charitable organization; and

(2) With respect to its activities in the state, is engaged primarily in performing religious, charitable, scientific, literary, or educational functions as defined in V.T.C.A., Tax Code § 11.18(d).

Qualified charitable organization means a statewide charitable organization or a local charitable organization.

Statewide charitable organization means a statewide organization that, with respect to its activities in the state, is engaged primarily in performing religious, charitable, scientific, literary, or educational functions as defined in V.T.C.A., Tax Code § 11.18(d).

(b) *Exemption.* A qualified charitable organization is entitled to an exemption from taxation of:

(1) The buildings and other real property and the tangible personal property that:

a. Are owned by the organization; and

b. Except as permitted by subsection (c) of this section, are used exclusively by the organization and other organizations eligible for an exemption from taxation under V.T.C.A., Tax Code § 11.18 or 11.184; and

(2) The real property owned by the organization consisting of:

a. An incomplete improvement, as defined by V.T.C.A., Tax Code § 11.184(j), that:

1. Is under active construction or other physical preparation; and

2. Is designed and intended to be used exclusively by the organization and other organizations eligible for an exemption from taxation under V.T.C.A., Tax Code § 11.18 or 11.184; and

b. The land on which the incomplete improvement is located that will be reasonably necessary for the use of the improvement by the organization and other organizations eligible for an exemption from taxation under V.T.C.A., Tax Code § 11.18 or 11.184.

(c) *Incidental use of property.* Use of exempt property by persons who are not charitable organizations eligible for an exemption from taxation under V.T.C.A., Tax Code § 11.18 or 11.184 does not result in the loss of an exemption authorized by this section if the use is incidental to use by those charitable organizations and limited to activities that benefit the charitable organization that owns or uses the property.

(d) *State comptroller's determination letter.* An organization applying for an exemption under this section must receive a letter from the state comptroller's office, and submit to the city a copy of the state comptroller's office determination letter finding the organization is engaged primarily in performing functions listed in V.T.C.A., Tax Code § 11.18(d).

(e) *Term of exemption.* An exemption under this section expires at the end of the fifth tax year after the year in which the exemption is granted. To continue to receive an exemption under this section after that year, the organization must obtain a new determination letter and reapply for the exemption.

(Ord. No. 2009-04, § 1(74-75), 2-2-2009)

Chapter 43 RESERVED

Chapter 44 TRAFFIC AND VEHICLES [1]

ARTICLE I. - IN GENERAL

ARTICLE II. - ADMINISTRATION AND ENFORCEMENT

ARTICLE III. - OPERATION OF VEHICLES

ARTICLE IV. - TRAFFIC CONTROL SIGNS, SIGNALS, AND DEVICES

ARTICLE V. - STOPPING, STANDING, AND PARKING

ARTICLE VI. - PARADES AND PROCESSIONS

ARTICLE VII. - RAILROADS

ARTICLE VIII. - AUTOMATED RED LIGHT ENFORCEMENT

FOOTNOTE(S):

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State Law reference— V.T.C.A., Transportation Code ch. 1 et seq. (Back)

ARTICLE I. IN GENERAL

Sec. 44-1. General responsibility and authority of director of public works.

Sec. 44-2. Emergency and experimental regulations.

Sec. 44-3. Presumptions regarding director's actions.

Sec. 44-4. Removing or damaging traffic barriers.

Sec. 44-5. Use of coasters, roller skates and similar devices restricted.

Sec. 44-6. Obstruction of view of traffic by trees, shrubs.

Secs. 44-7—44-30. Reserved.

Sec. 44-1. General responsibility and authority of director of public works.

The director of public works shall have the general responsibility and authority to determine the installation and proper timing and maintenance of traffic control devices, to conduct engineering analyses of traffic accidents and to devise remedial measures, to conduct engineering investigations of traffic conditions, to plan the operation of traffic on the streets and highways of this city, to cooperate with other officials in the development of ways and means to improve traffic conditions, and to carry out the additional powers and duties imposed by this chapter and ordinances of this city.

(Code 1978, § 23-2; Code 1993, § 78-2)

Sec. 44-2. Emergency and experimental regulations.

(a) The director of public works is hereby empowered to make regulations necessary to make effective the provisions of this chapter and the traffic ordinances of the city and to make and enforce temporary or experimental regulations to cover emergencies or special conditions. No such temporary or experimental regulation shall remain in effect for more than 90 days.

(b) The director of public works may test traffic control devices under actual conditions of traffic.

(Code 1978, § 23-3; Code 1993, § 78-3)

Sec. 44-3. Presumptions regarding director's actions.

(a) Wherever in this chapter the authority is given to the director of public works to do acts as he deems or, in his opinion, are advisable, necessary, or desirable, such acts shall be based on his observations and studies, according to generally used, accepted traffic control principles or techniques.

(b) Traffic innovations and experiments, however, are not to be inhibited hereby.

(c) As to any given traffic control device, signal, sign, marker, or marking, it shall be initially presumed that such device, signal, sign, marker or marking independently erected by the director of public works has been installed pursuant to his observations and studies based on generally used, accepted traffic control principles and techniques.

(d) Any responsibility or authority imposed or conferred on the director of public works by the provisions of this chapter may be performed by the director of public works or by those officers, employees or agents of the city working under his supervision and control and designated by him to perform the same.

(Code 1978, § 23-4; Code 1993, § 78-4)

Sec. 44-4. Removing or damaging traffic barriers.

It shall be unlawful for any person, other than a city employee, to remove or damage any barriers, either closing a street or for the purpose of warning traffic of an obstruction in the street, erected under the direction of the chief of police or director of public works.

(Code 1978, § 23-5; Code 1993, § 78-5)

Sec. 44-5. Use of coasters, roller skates and similar devices restricted.

No person upon roller skates, or riding in or by means of any coaster, toy vehicle or similar device, shall go upon any roadway except while crossing a street in a crosswalk and when so crossing, such person shall be granted all of the rights and shall be subject to all of the duties applicable.

(Code 1978, § 23-6; Code 1993, § 78-6)

Sec. 44-6. Obstruction of view of traffic by trees, shrubs.

Trees, shrubs, bushes, plants, grass or weeds growing at or near intersections in such a manner as to obstruct the view of approaching traffic from the right or left are hereby declared to be an immediate and substantial hazard to the public safety and a public nuisance and the director of public works is hereby authorized to remove same or so much thereof as deemed reasonably necessary by the director of public works as the case may be, to restore unobstructed approaches, without notice.

(Code 1978, § 23-8; Code 1993, § 78-8)

Secs. 44-7—44-30. Reserved.

ARTICLE II. ADMINISTRATION AND ENFORCEMENT

Sec. 44-31. Authority of police and fire department officials.

Sec. 44-32. Temporary traffic control officers.

Sec. 44-33. Liability of owner.

Sec. 44-34. Payment of fine for noncontested proceedings.

Sec. 44-35. Disposition of fines and forfeitures.

Secs. 44-36—44-58. Reserved.

Sec. 44-31. Authority of police and fire department officials.

(a) It shall be the duty of the officers of the police department or such officers as are assigned by the chief of police to enforce all traffic laws of the city and of the state.

(b) Officers of the police department or such officers as are assigned by the chief of police are hereby authorized to direct all traffic by voice, hand or signal in conformance with traffic laws, provided that, upon a fire or other emergency or to expedite traffic or to safeguard pedestrians, officers of the police department may direct traffic as conditions may require notwithstanding the provisions of the traffic laws.

(c) Officers of the fire department, when at the scene of a fire, may direct or assist the police in directing traffic there or in the immediate vicinity thereof.

(Code 1978, § 23-16; Code 1993, § 78-31)

Sec. 44-32. Temporary traffic control officers.

Under unusual conditions, the chief of police may appoint temporary traffic control officers until such unusual conditions cease to exist. These temporary officers shall have the same authority as regular officers of the police department unless they are specifically limited by the chief of police.

(Code 1978, § 23-20; Code 1993, § 78-35)

Sec. 44-33. Liability of owner.

It shall be unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle to require or knowingly to permit the operation of such vehicle upon a highway in any manner contrary to law.

(Code 1978, § 23-21; Code 1993, § 78-36)

Sec. 44-34. Payment of fine for noncontested proceedings.

(a) Defendants who do not want to contest the charges against them by going to trial can waive their right to a jury trial and plead either guilty or nolo contendere (meaning "no contest") and pay a fine. In some instances, the court may also require the defendant to comply with other sanctions. Adult defendants can plead guilty or nolo contendere without appearing in open court, by mailing or delivering to the court a plea and waiver of jury trial or payment of the fine and costs. Persons under the age of 17, commonly called juveniles, must appear in open court with a parent or guardian.

(b) Defendants who do not contest charges against them may still present evidence that may mitigate the fine. Proof as to the offense may be heard upon a plea of guilty or nolo contendere and the punishment assessed by the court (V.T.C.A., Code of Criminal Procedure art. 45.023).

(Code 1978, § 23-22; Code 1993, § 78-37)

Sec. 44-35. Disposition of fines and forfeitures.

All fines or forfeitures collected upon conviction or upon the forfeiture of bail of any person charged with a violation of any of the provisions of this chapter shall be paid into the city treasury and deposited in the general fund.

(Code 1978, § 23-23; Code 1993, § 78-38)

Secs. 44-36—44-58. Reserved.

ARTICLE III. OPERATION OF VEHICLES

Sec. 44-59. Driving on fresh pavement.

Sec. 44-60. Obstructing traffic generally.

Sec. 44-61. Obstructing intersection or crosswalk.

Sec. 44-62. Maximum speed limits on specific streets.

Sec. 44-63. U-turns restricted.

Sec. 44-64. Weaving.

Sec. 44-65. Cutting in.

Sec. 44-66. Violations of sections 44-64 and 44-65.

Sec. 44-67. Use of certain wireless communication devices while driving prohibited.

Sec. 44-68. Through truck traffic prohibited.

Secs. 44-69—44-94. Reserved.

Sec. 44-59. Driving on fresh pavement.

It shall be unlawful for any person to drive any vehicle upon any portion of any street in the city that has been freshly paved, unless all barriers or signal lights have been lawfully removed therefrom indicating that the street is ready for travel.

(Code 1978, § 23-33; Code 1993, § 78-63)

Sec. 44-60. Obstructing traffic generally.

It shall be unlawful for any person to stop, drive or propel a vehicle in such a manner as to block or obstruct the traffic on any street or alley of the city.

(Code 1978, § 23-35; Code 1993, § 78-65)

Sec. 44-61. Obstructing intersection or crosswalk.

No driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic control signal indication to proceed.

(Code 1978, § 23-36; Code 1993, § 78-66)

Sec. 44-62. Maximum speed limits on specific streets.

The city council may alter the maximum speed limits on any street or portion thereof within the city in accordance with the provisions of V.T.C.A., Transportation Code § 545.356. Whenever signs are posted giving notice of the maximum legal speed limit so established for a particular street or portion thereof, it shall be unlawful for any person to drive or operate any vehicle at a rate of speed in excess of such limit.

(Code 1978, § 23-37; Code 1993, § 78-67)

Sec. 44-63. U-turns restricted.

The driver of any vehicle shall not turn such vehicle so as to proceed in the opposite direction upon any street in a business district or at any intersection controlled by traffic lights and shall not, upon any other street or intersection, so turn a vehicle unless such movement can be made in safety and without interfering with other traffic.

(Code 1978, § 23-38; Code 1993, § 78-68)

Sec. 44-64. Weaving.

No driver of any motor vehicle or any other vehicle shall weave in and out of traffic to the extent that such weaving unreasonably interferes with the right-of-way of other vehicles on the right or left.

(Code 1978, § 23-39; Code 1993, § 78-69)

Sec. 44-65. Cutting in.

When traffic is traveling in parallel lanes, no driver or operator of any motor vehicle or any other vehicle shall cut from one lane of traffic to another so as to unreasonably interfere with the right-of-way of any other vehicle, except in an emergency.

(Code 1978, § 23-40; Code 1993, § 78-70)

Sec. 44-66. Violations of sections 44-64 and 44-65.

In regard to sections 44-64 and 44-65, the fact that any adjacent vehicle, into the path of which the weave or cut is made, shall slacken its pace abruptly or shall swerve into any parallel lane or near to any obstruction in the street or object at the side thereof shall be prima facie evidence of unreasonable interference with the right-of-way of that vehicle by the driver of the vehicle weaving or cutting in.

(Code 1978, § 23-41; Code 1993, § 78-71)

Sec. 44-67. Use of certain wireless communication devices while driving prohibited.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Electronic message means a self-contained piece of digital communication that is designed or intended to be transmitted to or from a wireless communication device. The term "electronic message" includes, but is not limited to, a text-based communication, such as electronic mail, a text message, an instant message, a command or request to access an internet site, or other data that uses a commonly recognized electronic communication protocol.

Wireless communication device means a device that uses a commercial mobile service, as defined by 47 USC 332.

(b) *Offense.* A person commits an offense if the person drives or operates a motor vehicle in the city while using a wireless communication device to view, send or compose an electronic message.

(c) *Affirmative defenses.* It is an affirmative defense to prosecution of conduct prohibited by subsection (b) of this section if:

(1) The person is using the wireless communication device strictly to engage in a telephone conversation, including dialing or deactivating a phone call;

(2) The person is an authorized government vehicle and is using the wireless communication device to respond to an emergency while acting in an official capacity;

(3) The person is using the wireless communication device while stopped or standing at a position parallel to and as close as possible to the right-hand edge or curb of a roadway where parking, standing or stopping in a nonemergency situation is not otherwise prohibited; or

(4) The person is using the wireless communication device to:

a. Operate only a global positioning or navigation system that is affixed to the vehicle;

b. Obtain emergency assistance to report a traffic accident, medical emergency, serious traffic hazard, fire or other hazardous response service;

c. Prevent a crime about to be committed;

d. Communicate with the reasonable belief that a person's life, safety, or property is in immediate danger; or

e. Operate only a device that is permanently installed inside the vehicle or that is solely in a voice-activated or other hands-free mode.

(d) *Conflicting regulations.* To the extent that any clause, phrase, provision, sentence or part of this section conflicts with V.T.C.A., Transportation Code § 545.424, regarding the use of wireless communication devices while operating a motor vehicle by minors; or V.T.C.A., Transportation Code § 545.425, regarding the use of wireless communication devices in school crossing zones, this section does not apply.

(Ord. No. 2010-25, § 1, 12-6-2010)

Sec. 44-68. Through truck traffic prohibited.

(a) *Definitions.* The following words, terms and phrases when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning. Terms not defined herein shall be construed in accordance with customary usage.

Authorized emergency trucks includes fire department trucks, police trucks, public ambulances for which permits have been issued by the state board of health, emergency trucks of municipal or volunteer departments or public service corporations as are designated or authorized by the governing body of an incorporated city, private trucks operated by volunteer firefighters or certified emergency medical volunteers while answering a fire alarm or responding to a medical emergency, and trucks owned by the state or by a political subdivision engaged in emergency utility repair or electric, water, or wastewater services.

Light truck means any truck with a manufacturer's rated carrying capacity of 5,000 pounds or less, including trucks commonly known as pickup trucks, panel delivery trucks, and carryall trucks.

Proof of route means a written verification of pickups, deliveries, or destinations, which may include a log book, delivery slip, shipping order, bill or any other document which identifies and specifies the date, address, and name of the person requesting or directing the pick up or delivery and the destination of the pickup or delivery.

Truck means a motor vehicle designed, used or maintained primarily for the transportation of property, including truck tractors, road tractors, trailers, semi-trailers, pole trailers, and special mobile equipment as those terms are defined in V.T.C.A., Transportation Code § 541.201.

(b) *Through truck traffic.*

(1) *Regulation.* A person commits an offense if the person operates a truck upon a public street designated as a no through trucks street.

(2) *Affirmative defenses.* It is an affirmative defense to prosecution under this section if:

a. The truck was an authorized emergency truck;

b. The truck was a bus or light truck; or

c. The truck was being driven to seek service or repairs at a facility that engages in the business or repairs of commercial motor vehicles or the truck was being driven to or from home or to fulfill a local commercial obligation to a buyer or seller at a given destination, evidenced by a bill of sale or invoice; and the public street was the only route to such destination.

(Ord. No. 2011-16, §, 1, 7-26-2011)

Secs. 44-69—44-94. Reserved.

ARTICLE IV. TRAFFIC CONTROL SIGNS, SIGNALS, AND DEVICES [2]

Sec. 44-95. Authority to install.

Sec. 44-96. Manual and specifications.

Sec. 44-97. Presumptions of legality.

Sec. 44-98. Ratification of existing devices.

Sec. 44-99. Authority to sign one-way streets and alleys.

Sec. 44-100. Movement of traffic restrictions.

Sec. 44-101. Turning movements regulated.

Sec. 44-102. Authority for stop signs and yield signs.

Sec. 44-103. Designation of crosswalks, zones and marking traffic lanes.

Sec. 44-104. Limitations on turning.

Sec. 44-105. Gross weight limits—Authorized.

Sec. 44-106. Same—Concrete trucks.

Secs. 44-107—44-125. Reserved.

Sec. 44-95. Authority to install.

The director of public works shall place and maintain official traffic control devices when and as required under the provisions of this article and traffic ordinances of the city to make effective the provisions thereof, and may place and maintain such additional official traffic control devices as he may deem necessary to regulate, warn or guide traffic under the provisions of this article and traffic ordinances of the city and state law.

(Code 1978, § 23-50; Code 1993, § 78-96)

Sec. 44-96. Manual and specifications.

All traffic control signs, signals and devices shall conform to the manual and specifications approved by the state highway and public transportation commission. All signs and signals required under this article for a particular purpose shall so far as practicable be uniform as to type and location throughout the city. All traffic control devices so erected and not inconsistent with the provisions of state law and this article shall be official traffic control devices.

(Code 1978, § 23-51; Code 1993, § 78-97)

State law reference— State highway and public transportation commission to adopt manual, V.T.C.A., Transportation Code § 544.001.

Sec. 44-97. Presumptions of legality.

(a) Wherever official traffic control devices are placed in position approximately conforming to the requirements of this article, such devices shall be presumed to have been so placed by the official act or direction of lawful authority, unless the contrary shall be established by competent evidence.

(b) Any official traffic control device placed pursuant to the provisions of this article and purporting to conform to the lawful requirements pertaining to such devices shall be presumed to comply with the requirements of this article, unless the contrary shall be established by competent evidence.

(Code 1978, § 23-52; Code 1993, § 78-98)

Sec. 44-98. Ratification of existing devices.

All traffic control signs, signals, devices and markings placed or erected prior to the adoption of this Code and in use for the purpose of regulating, warning or guiding traffic are hereby affirmed, ratified and

declared to be official traffic control devices, provided such traffic control devices are not inconsistent with the provisions of this article or state law.

(Code 1978, § 23-53; Code 1993, § 78-99)

Sec. 44-99. Authority to sign one-way streets and alleys.

The director of public works is hereby authorized to determine and designate one-way streets or alleys and shall place and maintain official traffic control devices giving notice thereof. No such designation shall be effective unless such devices are in place.

(Code 1978, § 23-54; Code 1993, § 78-100)

State law reference— Authority of city to designate one-way streets, V.T.C.A., Transportation Code § 542.202(a)(10).

Sec. 44-100. Movement of traffic restrictions.

The director of public works is hereby authorized to determine and designate streets, parts of streets, or specific lanes thereon upon which vehicular traffic shall proceed in one direction during one period and the opposite direction during another period of the day and shall place and maintain appropriate markings, signs, barriers or other devices to give notice thereof. The director of public works may erect signs temporarily designating lanes to be used by traffic moving in a particular direction, regardless of the centerline of the roadway.

(Code 1978, § 23-55; Code 1993, § 78-101)

Sec. 44-101. Turning movements regulated.

The director of public works is hereby authorized to:

(1) Place official traffic control devices within or adjacent to intersections indicating the course to be traveled by vehicles turning at such intersections, and such course to be traveled as so indicated may conform to or be other than as prescribed by law.

(2) Determine those intersections at which drivers of vehicles shall not make a right, left or U-turn, and shall place proper signs at such intersections. The making of such turns may be prohibited between certain hours of any day and permitted at other hours, in which event the same shall be plainly indicated on the signs, or they may be removed when such turns are permitted.

(Code 1978, § 23-56; Code 1993, § 78-102)

Sec. 44-102. Authority for stop signs and yield signs.

The director of public works is hereby authorized to erect and maintain stop signs, yield signs or other official traffic control devices to designate through streets or to designate intersections or other roadway junctions at which vehicular traffic on one or more of the roadways should yield or stop and yield before entering the intersection or junction.

(Code 1978, § 23-57; Code 1993, § 78-103)

Sec. 44-103. Designation of crosswalks, zones and marking traffic lanes.

The director of public works is hereby authorized to:

(1) Designate and maintain, by appropriate devices, marks or lines upon the surface of the roadway, crosswalks at any intersection where, in his opinion, there is particular danger to pedestrians crossing the roadway; and at such other places as he may deem necessary.

(2) Establish safety, quiet, and play zones and others of such kind and character and at such places as he may deem necessary for the protection of the public.

(3) Mark lanes for traffic on street pavements at such places as he may deem advisable, consistent with this article and other traffic ordinances of the city.

(Code 1978, § 23-58; Code 1993, § 78-104)

Sec. 44-104. Limitations on turning.

No person shall turn a vehicle at any place or in any direction where there appears an authorized sign or device prohibiting such turn.

(Code 1978, § 23-59; Code 1993, § 78-105)

State law reference— Authority of city to regulate turning at intersections, V.T.C.A., Transportation Code § 542.202(a)(7).

Sec. 44-105. Gross weight limits—Authorized.

The director of public works is hereby authorized, on the basis of engineering and traffic investigation, to erect and maintain official traffic control devices on any streets or parts of streets to impose gross weight limits.

(Code 1978, § 23-60; Code 1993, § 78-106)

Sec. 44-106. Same—Concrete trucks.

As authorized by V.T.C.A., Transportation Code § 622.014, the city does hereby establish as its weight limits on ready-mixed concrete trucks traveling on the streets of the city to 36,000 pounds for a tandem-axle load, 12,000 pounds for a single-axle load; and 48,000 pounds for a gross load and the amendment to V.T.C.A., Transportation Code § 622.012, passed in 1977, is hereby in all things rejected.

(Code 1978, § 23-61; Code 1993, § 78-107)

Secs. 44-107—44-125. Reserved.

FOOTNOTE(S):

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State Law reference— Traffic signs, signals and markings, V.T.C.A., Transportation Code ch. 544. (Back)

ARTICLE V. STOPPING, STANDING, AND PARKING [3]

DIVISION 1. - GENERALLY

DIVISION 2. - PROHIBITED, RESTRICTED ON CERTAIN STREETS

DIVISION 3. - LOADING AND UNLOADING

FOOTNOTE(S):

--- (**3**) ---

State Law reference— Authority of city to regulate standing and parking of vehicles, V.T.C.A., Transportation Code § 542.202(a)(2). (Back)

DIVISION 1. GENERALLY

Sec. 44-126. Authority of director of public works.

Sec. 44-127. Presumption that owner of vehicle illegally parked same.

Sec. 44-128. Authority to impound vehicles.

Sec. 44-129. Parking not to obstruct traffic.

Sec. 44-130. No stopping, standing or parking near hazardous or congested places.

Sec. 44-131. Signs or markings indicating angle parking.

Secs. 44-132—44-160. Reserved.

Sec. 44-126. Authority of director of public works.

(a) The director of public works is hereby authorized on the basis of an engineering and traffic investigation to prohibit, regulate or limit stopping, standing or parking of vehicles at all times or during specified hours.

(b) It shall be the duty of the director of public works to erect and maintain such signs to give notice of these regulations as are required by state law or this article.

(Code 1978, § 23-66; Code 1993, § 78-131; Ord. No. 92-20, § 1.0, 12-14-1992)

Sec. 44-127. Presumption that owner of vehicle illegally parked same.

In any prosecution charging a violation of any ordinance or regulation governing the standing or parking of a vehicle, proof that the particular vehicle described in the complaint was parked in violation of any such ordinance or regulation, together with proof that the defendant named in the complaint was, at the time of such parking, the registered owner of such vehicle shall constitute in evidence a prima facie presumption that the registered owner of such vehicle was the person who parked or placed such vehicle at the point where, and for the time during which, such violation occurred.

(Code 1978, § 23-67; Code 1993, § 78-132)

Sec. 44-128. Authority to impound vehicles.

(a) *Authority given.* Members of the police department are hereby authorized to remove a vehicle from a street or roadway to the nearest garage or other place of safety, or to a garage or impoundment area maintained by the police department, or otherwise maintained by this city under the circumstances enumerated in this section.

(1) When any vehicle is left unattended upon any bridge where such vehicle constitutes an obstruction to traffic.

(2) When a vehicle upon a roadway is so disabled as to constitute an obstruction to traffic and the person in charge of the vehicle is by reason of physical injury incapacitated to such an extent as to be unable to provide for its custody or removal.

(3) When any vehicle is left unattended upon a street and is so parked illegally as to constitute a definite hazard or obstruction to the normal movement of traffic.

(4) When any vehicle is illegally parked so as to block the entrance to any private driveway and it is impracticable to move such vehicle from in front of the driveway to another point on the highway.

(5) When any vehicle is found upon a highway and report has previously been made that such vehicle has been stolen or complaint has been filed and a warrant thereon issued charging that such vehicle has been embezzled.

(6) When any such officer has reasonable grounds to believe that any vehicle has been abandoned.

(7) When an officer arrests any person driving or in control of a vehicle for an alleged offense and such officer is by this Code or other law required to take the person arrested immediately before a magistrate.

(8) When any vehicle parked or standing in or on any portion of a roadway in the opinion of a member of the police department constitutes a hazard, or interferes with a normal function of a governmental agency, or by reason of any catastrophe, emergency or unusual circumstance the safety of such vehicle is imperiled.

(9) When any vehicle has received three citations, issued in the same location or area of the city, for violating the 24-hour standing or parking regulation imposed under this article.

(b) *Owner notified.* Whenever an officer removes a vehicle from a street as authorized in this section and the officer knows or is able to ascertain from the records the name and address of the owner thereof, such officer shall immediately give or cause to be given notice in writing to such owner of the fact of such removal and reasons therefor and of such place to which such vehicle has been removed. If any such vehicle is stored in a public garage, a copy of such notice shall be given to the proprietor of such garage.

(c) *Owner not located.* Whenever an officer removes a vehicle from a street under this section and does not know and is not able to ascertain the name of the owner, or for any reason is unable to give the notice to the owner, and if the vehicle is not returned to the owner within a period of three days, the officer shall immediately send or cause to be sent a written report of such removal by mail to the state highway department, and shall file a copy of such notice with the proprietor of any public garage in which the vehicle may be stored. Such notice shall include a complete description of the vehicle, the date, time and place from which removed, the reasons for such removal and the name of the garage or place where the vehicle is stored.

(d) *Fee.* The chief of police is authorized to assess against and collect from the owner or driver of any lawfully impounded vehicle an impounding fee as currently established or as hereafter adopted by resolution of the city council from time to time before the release of such vehicle. The payment of this

impounding fee shall not excuse such owner or driver of the vehicle from the penalty for any violation of this article which may have given rise to the impoundment of such vehicle.

(Code 1978, § 23-68; Code 1993, § 78-133; Ord. No. 92-20, § 2.0, 12-14-1992)

State law reference— Removal of illegally parked vehicles, V.T.C.A., Transportation Code § 545.305.

Sec. 44-129. Parking not to obstruct traffic.

No person shall park any vehicle upon a street or alley in such a manner or under such conditions as to leave available less than ten feet of the width of the roadway for free movement of vehicular traffic.

(Code 1978, § 23-69; Code 1993, § 78-134)

Sec. 44-130. No stopping, standing or parking near hazardous or congested places.

(a) The director of public works is hereby authorized to determine and designate by proper signs places not exceeding 100 feet in length in which the stopping, standing or parking of vehicles would create an especially hazardous condition or would cause unusual delay to traffic.

(b) When official signs are erected at hazardous or congested places as authorized in this section, no person shall stop, stand or park a vehicle in any such designated place.

(Code 1978, § 23-70; Code 1993, § 78-135)

Sec. 44-131. Signs or markings indicating angle parking.

The director of public works shall determine upon what streets angle parking shall be permitted and shall mark or sign such streets but such angle parking shall not be indicated upon any federal aid and/or state highway within the city unless the state commission on highways and public transportation has determined that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

(Code 1978, § 23-71; Code 1993, § 78-136)

Secs. 44-132—44-160. Reserved.

DIVISION 2. PROHIBITED, RESTRICTED ON CERTAIN STREETS

Sec. 44-161. Application.

Sec. 44-162. Parking or standing in excess of 24 hours prohibited; regulations not exclusive.

Sec. 44-163. Parking prohibited on certain streets.

Sec. 44-164. Parking restricted on certain streets.

Sec. 44-165. When signs required.

Sec. 44-166. Parking restricted in city hall parking lots.

Secs. 44-167—44-185. Reserved.

Sec. 44-161. Application.

The provisions of this article prohibiting the standing or parking of a vehicle shall apply at all times or at those times in this article specified or as indicated on official signs except when it is necessary to stop a vehicle to avoid conflict with other traffic or in compliance with the directions of a police officer or official traffic control device.

(Code 1978, § 23-78; Code 1993, § 78-146)

Sec. 44-162. Parking or standing in excess of 24 hours prohibited; regulations not exclusive.

(a) It shall be unlawful for any person to leave any vehicle parked or standing upon any public street, alley, or other public property within the city for a period of time in excess of 24 consecutive hours.

(b) The provisions of this division imposing a time limit on parking shall not relieve any person from the duty to observe other and more restrictive provisions prohibiting or limiting the stopping, standing or parking of vehicles in specified places or at specified times.

(Code 1978, § 23-79; Code 1993, § 78-147; Ord. No. 92-20, § 1.0, 12-14-1992)

Sec. 44-163. Parking prohibited on certain streets.

When signs are erected giving notice thereof, no person shall park a vehicle at any time upon any of the streets described by ordinance.

(Code 1978, § 23-80; Code 1993, § 78-148)

Sec. 44-164. Parking restricted on certain streets.

When signs are erected in each block giving notice thereof, no person shall park a vehicle between the hours specified by ordinance on any day, except Sundays and public holidays, within the district or upon any of the streets described by ordinance.

(Code 1978, § 23-81; Code 1993, § 78-149)

Sec. 44-165. When signs required.

Whenever any time limit regulating stopping, standing or parking of vehicles for time periods of less than 24 hours is imposed, or any prohibition is imposed, by this division or ordinance of the city, it shall be the duty of the director of public works to erect appropriate signs giving notice thereof and no such regulations shall be effective unless such signs are erected and in place at the time of the offense charged. The director of public works may, but is not required to, erect such signs at such locations as he determines to be appropriate to give notice of the 24-consecutive hour parking or standing restricting imposed by this division.

(Code 1978, § 23-82; Code 1993, § 78-150; Ord. No. 92-20, § 1.0, 12-14-1992)

Sec. 44-166. Parking restricted in city hall parking lots.

(a) It shall be unlawful for any person to park, stop or stand any vehicle of such size as to occupy more than one designated or marked parking space within or upon the city hall parking lots located at 400 West Market Street and 401 West Market Street on any day during which the city is conducting a regular or special municipal election.

(b) The city manager is, by this section, authorized and directed to cause signs giving notice of the parking restriction imposed by this section to be conspicuously placed at the entrances of each of the parking lots affected hereby, on the date of each regular or special municipal election.

(Code 1993, § 78-151; Ord. No. 98-04, §§ 1—3, 2-2-1998)

Secs. 44-167—44-185. Reserved.

DIVISION 3. LOADING AND UNLOADING

Sec. 44-186. Designation of curb loading zones.

Sec. 44-187. Standing in passenger curb loading zone.

Sec. 44-188. Standing in freight curb loading zones.

Secs. 44-189—44-214. Reserved.

Sec. 44-186. Designation of curb loading zones.

The director of public works is hereby authorized to determine the location of passenger and freight curb loading zones and shall place and maintain appropriate signs indicating the same and stating the hours during which the provisions of this division are applicable.

(Code 1978, § 23-90; Code 1993, § 78-161)

Sec. 44-187. Standing in passenger curb loading zone.

No person shall stop, stand or park a vehicle for any purpose or period of time other than for the expeditious loading or unloading of passengers in any place marked as a passenger curb loading zone during hours when the regulations applicable to such curb loading zone are effective, and then only for a period not to exceed three minutes.

(Code 1978, § 23-91; Code 1993, § 78-162)

Sec. 44-188. Standing in freight curb loading zones.

(a) No person shall stop, stand or park a vehicle for any purpose or length of time other than for the expeditious unloading and delivery or pick-up and loading of property in any place marked as a loading zone during hours when the provisions applicable to such zones are in effect. In no case shall the stop for loading or unloading of property exceed 30 minutes.

(b) The driver of a vehicle may stop temporarily at a loading zone for the purpose of and while actually engaged in loading or unloading passengers when such stopping does not interfere with any vehicle which is waiting to enter or about to enter such zone to load or unload property.

(Code 1978, § 23-92; Code 1993, § 78-163)

Secs. 44-189—44-214. Reserved.

ARTICLE VI. PARADES AND PROCESSIONS [4]

Sec. 44-215. Permit required.

Sec. 44-216. When prohibited.

Sec. 44-217. Route.

Sec. 44-218. Exception to article.

Sec. 44-219. Change of route.

Sec. 44-220. Driving through procession prohibited.

Secs. 44-221—44-248. Reserved.

Sec. 44-215. Permit required.

It shall be unlawful for any number of persons, delegation or association of persons or for any company, circus or group to parade or assemble on the streets or public grounds within the city without first having obtained a written permit from the chief of police.

(Code 1978, § 23-104; Code 1993, § 78-186)

Sec. 44-216. When prohibited.

A permit shall not be issued under the provisions of this article for any person to start any parade or assembly between the hours of 7:00 a.m. and 9:00 a.m.; between the hours of 11:00 a.m. and 1:00 p.m.; and between the hours of 3:30 p.m. and 6:00 p.m., except Sundays and on days that the city council shall declare legal holidays.

(Code 1978, § 23-105; Code 1993, § 78-187)

Sec. 44-217. Route.

Whenever any permit is granted under the provisions of this article, it shall designate the streets, avenues, alleys and thoroughfares over which the parade is privileged to travel and the time that the parade shall be held and completed, and if for an assembly, the place of assembly and time it shall be held and completed.

(Code 1978, § 23-106; Code 1993, § 78-188)

Sec. 44-218. Exception to article.

The provisions of this article shall not apply to movements of the military forces of the United States of America or of the state, nor to the funeral procession being held as a part of the burial services of a human body.

(Code 1978, § 23-107; Code 1993, § 78-189)

Sec. 44-219. Change of route.

The chief of police is authorized to make such change in the route of any proposed parade as he may deem proper and necessary in averting a breach of the peace, public disorder or traffic congestion within the city.

(Code 1978, § 23-108; Code 1993, § 78-190)

Sec. 44-220. Driving through procession prohibited.

It shall be unlawful for the driver of any vehicle to drive between vehicles comprising a funeral or other authorized parade procession while they are in motion, provided that such vehicles are conspicuously so designated. This provision shall not apply to intersections where traffic is controlled by traffic control signals or police officers.

(Code 1978, § 23-109; Code 1993, § 78-191)

Secs. 44-221—44-248. Reserved.

FOOTNOTE(S):

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State Law reference— Authority of city to regulate parades and processions, V.T.C.A., Transportation Code § 542.202(a)(3). (Back)

ARTICLE VII. RAILROADS [5]

Sec. 44-249. Maintenance of crossings.

Sec. 44-250. City drainage not to be obstructed.

Sec. 44-251. Boarding, alighting from moving cars.

Secs. 44-252—44-280. Reserved.

Sec. 44-249. Maintenance of crossings.

It shall be the duty of each railroad company whose lines of tracks are constructed within the corporate limits of the city to put in good repair and maintain in a good condition all streets or parts of streets through or over which its line of tracks may run, and to keep the same free from obstructions of every kind, which such repair shall be made and constructed under the direction and supervision of the city.

(Code 1978, § 21-2; Code 1993, § 78-211)

Sec. 44-250. City drainage not to be obstructed.

It shall be unlawful for any railroad company to obstruct the drainage of the city in any way or by any means whatsoever.

(Code 1978, § 21-4; Code 1993, § 78-213)

Sec. 44-251. Boarding, alighting from moving cars.

It shall be unlawful for any person not an employee of the railroad company to get on or off of a railroad passenger coach, freight car or engine while such equipment is in motion.

(Code 1978, § 21-5; Code 1993, § 78-214)

Secs. 44-252—44-280. Reserved.

FOOTNOTE(S):

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State Law reference— Railroads generally, V.T.C.A., Transportation Code chs. 91, 171. (Back)

ARTICLE VIII. AUTOMATED RED LIGHT ENFORCEMENT

Sec. 44-281. Definitions.

Sec. 44-282. Imposition of civil penalty for creating dangerous intersections.

Sec. 44-283. Enforcement; procedures.

Sec. 44-284. Presumption.

Sec. 44-285. Administrative adjudication hearing.

Sec. 44-286. Appeal.

Sec. 44-287. Effect of liability; exclusion of civil remedy; enforcement.

Sec. 44-281. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Department means the police department of the city.

Intersection means the place or area where two or more streets intersect.

Owner means the owner of a motor vehicle as shown on the motor vehicle registration records of the state department of transportation or the analogous department or agency of another state or country.

Photographic traffic monitoring system means a system that:

(1) Consists of a camera and vehicle sensor installed to exclusively work in conjunction with an electrically operated traffic control signal; and

(2) Is capable of producing at least two recorded images that depict the license plate attached to the front or the rear of a motor vehicle that is not operated in compliance with the instructions of the traffic control signal.

Recorded image means a photographic or digital image that depicts the front or rear of a motor vehicle.

System location means the approach to an intersection toward which a photographic traffic monitoring system is directed and in operation.

Traffic control signal has the meaning assigned by V.T.C.A., Transportation Code § 541.304.

(Ord. No. 2007-08, § 1(78-220), 8-20-2007)

Sec. 44-282. Imposition of civil penalty for creating dangerous intersections.

The owner of a motor vehicle is liable to the city for a civil penalty of $75.00 if, while facing only a steady red signal displayed by an electronically operated traffic control signal located within the city, the motor vehicle is operated in violation of the instructions of that traffic control signal, as specified by V.T.C.A., Transportation Code § 544.007(d).

(Ord. No. 2007-08, § 1(78-221), 8-20-2007)

Sec. 44-283. Enforcement; procedures.

(a) *Notice mailed.* In order to impose a civil penalty under this article, the department shall mail a notice of violation to the owner of the motor vehicle liable for the civil penalty, not later than the 30th day after the date the violation is alleged to have occurred, to:

(1) The owner's address as shown on the registration records of the state department of transportation; or

(2) If the vehicle is registered in another state or country, the owner's address as shown on the motor vehicle registration records of the department or agency of the other state or country analogous to the state department of transportation.

(b) *Contents of notice.* A notice of violation issued under this article shall contain the following:

(1) A description of the violation alleged;

(2) The location of the intersection where the violation occurred;

(3) The date and time of the violation;

(4) The name and address of the owner of the vehicle involved in the violation;

(5) The registration number displayed on the license plate of the vehicle involved in the violation;

(6) A copy of a recorded image of the violation limited solely to a depiction of the area of the registration number displayed on the license plate of the vehicle involved in the violation;

(7) The amount of the civil penalty for which the owner is liable;

(8) The date by which the civil penalty must be paid;

(9) A statement that a recorded image is evidence in a proceeding for the imposition of a civil penalty;

(10) Information that informs the person named in the notice of violation:

a. Of the person's right to contest the imposition of the civil penalty against the person in an administrative adjudication;

b. That imposition of the civil penalty may be contested by submitting a written request for an administrative adjudication hearing before the expiration of the period specified in section 44-285

c. That failure to pay the civil penalty or to contest liability in a timely manner is an admission of liability and a waiver of the owner's right to appeal the imposition of the civil penalty and that failure to appear at an administrative adjudication hearing after having requested a hearing is an admission of liability; and

d. That failure to pay the civil penalty or contest the imposition of such penalty within the time allowed shall result in the imposition of a late fee as currently established or as hereafter adopted by resolution of the city council from time to time;

(11) A statement that, if at the time and place of the violation, the vehicle was owned by a person in the business of selling, renting, or leasing motor vehicles or by a person who was not named in the notice of violation, the owner may transfer liability for the violation to the person who was operating the vehicle at that time and place if the owner submits to the department, not later than 30 days after the date the notice was received, by affidavit, a written declaration under penalty of perjury, or testimony under oath at an administrative adjudication hearing, the name and current address of the person and that such person:

a. Was test driving the vehicle at the time and place of the violation;

b. Was renting or leasing the vehicle at the time of the violation; or

c. Was the subsequent owner of the motor vehicle, if ownership of the vehicle was transferred by the owner before the time of the violation;

(12) A statement that the owner of the vehicle in the notice of violation may elect to pay the civil penalty by mail sent to a specified address instead of appearing at the time and place of the administrative adjudication hearing; and

(13) A statement that if the owner of the motor vehicle fails to timely pay the amount of the civil penalty imposed against the owner:

a. An arrest warrant may not be issued for the owner; and

b. The imposition of the civil penalty may not be recorded on the owner's driving record.

(c) *Notice received.* A notice of violation under this article is presumed to have been received on the fifth day after the date the notice of violation is mailed.

(d) *Failure to act.* A person who fails to pay the civil penalty or to contest liability for the penalty in a timely manner, or who requests an administrative adjudication hearing to contest the imposition of the civil penalty against the person and fails to appear at that hearing, is considered to:

(1) Admit liability for the full amount of the civil penalty stated in the notice of violation mailed to the person; and

(2) Waive the person's right to appeal the imposition of the civil penalty.

(Ord. No. 2007-08, § 1(78-222), 8-20-2007)

Sec. 44-284. Presumption.

(a) It is presumed that the owner of the motor vehicle committed the violation alleged in the notice of violation mailed to the person if the motor vehicle depicted in a photograph or digital image taken by a photographic traffic signal enforcement system belongs to the owner of the motor vehicle.

(b) If, at the time of the violation alleged in the notice of violation, the motor vehicle depicted in a photograph or digital image taken by a photographic traffic signal enforcement system was owned by a person in the business of selling, renting, or leasing motor vehicles, or by a person who was not the person named in the notice of violation, the presumption under subsection (a) of this section is rebutted on the presentation of evidence establishing that the vehicle was at that time:

(1) Being test driven by another person;

(2) Being rented or leased by the vehicle's owner to another person; or

(3) Owned by a person who was not the person named in the notice of violation.

(c) Notwithstanding section 44-285, the presentation of evidence under subsection (b) of this section by a person who is in the business of selling, renting, or leasing motor vehicles, or did not own the vehicle at the time of the violation, must be made by affidavit, through testimony at the administrative adjudication hearing under section 44-285, or by a written declaration under penalty of perjury. The affidavit or written declaration may be submitted by mail to the department.

(d) If the presumption established by subsection (a) of this section is rebutted under subsection (b) of this section, a civil penalty may not be imposed on the owner of the vehicle or the person named in the notice of violation, as applicable.

(e) If, at the time of the violation alleged in the notice of violation, the motor vehicle depicted in the photograph or digital image taken by the photographic traffic signal enforcement system was owned by a person in the business of renting or leasing motor vehicles and the vehicle was being rented or leased to an individual, the owner of the motor vehicle shall provide to the department the name and address of the individual who was renting or leasing the motor vehicle depicted in the photograph or digital image and a statement of the period during which that individual was renting or leasing the vehicle. The owner shall provide the information required by this subsection not later than the 30th day after the date the notice of violation is received. If the owner provides the required information, it is presumed that the individual renting or leasing the motor vehicle committed the violation alleged in the notice of violation and the department may send a notice of violation to that individual at the address provided by the owner of the motor vehicle.

(Ord. No. 2007-08, § 1(78-223), 8-20-2007)

Sec. 44-285. Administrative adjudication hearing.

A person who receives a notice of violation under this article may contest the imposition of the civil penalty by requesting in writing an administrative adjudication of the civil penalty within the time provided in the notice (which period shall not be less than 30 days following the mailing of the notice). Upon receipt of the request, the department shall notify the person of the date and time of the hearing on the administrative adjudication. The administrative adjudication hearing shall be held before a hearing officer appointed by the city manager within 180 days following receipt of the written request for such hearing.

(Ord. No. 2007-08, § 1(78-224), 8-20-2007; Ord. No. 2009-03, § 2, 1-19-2009)

Sec. 44-286. Appeal.

(a) The owner of a motor vehicle determined by a hearing officer to be liable for a civil penalty may appeal that determination to the judge of the municipal court by filing an appeal petition with the clerk of the court.

(b) The petition must be:

(1) Filed before the 31st day after the date on which the administrative adjudication hearing officer entered the finding of liability for the civil penalty; and

(2) Accompanied by payment of a filing fee as currently established or as hereafter adopted by resolution of the city council from time to time.

(c) The court clerk shall schedule a hearing and notify the owner of the motor vehicle and the department of the date, time, and place of such hearing.

(d) An appeal stays enforcement and collection of the civil penalty imposed against the owner of the motor vehicle. The owner shall file a notarized statement of personal financial obligation to perfect the owner's appeal.

(e) An appeal under this section shall be determined by the court by trial de novo.

(Ord. No. 2007-08, § 1(78-225), 8-20-2007)

Sec. 44-287. Effect of liability; exclusion of civil remedy; enforcement.

(a) The imposition of a civil penalty under this article is not a conviction and may not be considered a conviction for any purpose. If the owner of the motor vehicle fails to timely pay the amount of the civil penalty imposed against the owner:

(1) An arrest warrant may not be issued for the owner; and

(2) The imposition of the civil penalty may not be recorded on the owner's driving record.

(b) The department may not impose a civil penalty under this article on the owner of a motor vehicle if the operator of the vehicle was arrested or issued a citation and notice to appear by a peace officer for the same violation of V.T.C.A., Transportation Code § 544.007(d) recorded by the photographic traffic control signal enforcement system.

(c) The city attorney is authorized to file suit to enforce collection of a civil penalty assessed under this article.

(Ord. No. 2007-08, § 1(78-226), 8-20-2007)

Chapter 45 RESERVED

Chapter 46 UTILITIES [1]

ARTICLE I. - IN GENERAL

ARTICLE II. - RATES AND CHARGES

ARTICLE III. - INDUSTRIAL WASTES

ARTICLE IV. - WATER, WASTEWATER, AND DRAINAGE CAPITAL RECOVERY FEES

ARTICLE V. - GAS LINES

ARTICLE VI. - WATER AND SEWER LINES

ARTICLE VII. - WATER CONSERVATION

FOOTNOTE(S):

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Editor's note— With the adoption of Ordinance No. 80-6 on November 17, 1980, the city surrendered its jurisdiction to regulate electric utility rates to the Public Utility Commission of Texas. (Back)

State Law reference— V.T.C.A., Utilities Code ch. 1 et seq.; water and utilities, V.T.C.A., Local Government Code ch. 401 et seq. (Back)

ARTICLE I. IN GENERAL

Sec. 46-1. Definitions.
Sec. 46-2. Scope of provisions.
Sec. 46-3. Service to comply with technical provisions.
Sec. 46-4. Rules, regulations.
Sec. 46-5. Inspection.
Sec. 46-6. Right of entry.
Sec. 46-7. Termination of service authorized.
Sec. 46-8. Liability of city for damage.
Sec. 46-9. Utility service—Application required.
Sec. 46-10. Same—Not available to debtors.
Sec. 46-11. Same—Approval of application.
Sec. 46-12. Same—Use assumed.
Sec. 46-13. Not to use contrary to permit.
Sec. 46-14. Damage, trespass of equipment.
Sec. 46-15. Temporary interruption of service.
Sec. 46-16. Restricting use.
Sec. 46-17. Sale of service by customer.
Sec. 46-18. Connections to service.
Sec. 46-19. Separate connections.
Sec. 46-20. Unlawful connections.
Sec. 46-21. Connection or disconnection by other than city employees prohibited.
Sec. 46-22. Maintenance of system by consumer.
Sec. 46-23. Sewer line maintenance and construction.
Sec. 46-24. Water tap and service line construction and maintenance.
Sec. 46-25. When connection with sewer main is compulsory.
Secs. 46-26—46-53. Reserved.

Sec. 46-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Utility means and includes water, sewer and/or any other utility service furnished by the city to consumers thereof.

(Code 1978, § 24-1; Code 1993, § 82-1)

Sec. 46-2. Scope of provisions.

All pertinent provisions of this chapter are hereby made a part of the terms and conditions whereby the city shall furnish any utility service to any person, or whereby the city shall make any utility connections, or perform any work of any kind in connection with the furnishing of any utility service pursuant to the rules and regulations of the city council.

(Code 1978, § 24-2; Code 1993, § 82-2)

Sec. 46-3. Service to comply with technical provisions.

Any utility service furnished under the provisions of this chapter shall be in accordance with and in compliance with all applicable technical provisions of this Code, state law and city ordinances, rules and regulations.

(Code 1978, § 24-3; Code 1993, § 82-3)

Sec. 46-4. Rules, regulations.

The city council shall have the authority to establish by rule or regulation such standards and specifications as may be deemed necessary for the installation, construction and maintenance of any utility service system owned and operated by the city within or without the city and under the management of the city council. Such rules, regulations, standards and specifications shall be filed in the office of the city secretary. Violation of such rules, regulations, standards and specifications shall be deemed a misdemeanor.

(Code 1978, § 24-4; Code 1993, § 82-4)

Sec. 46-5. Inspection.

In order to protect the utility service supply, the city will not make any water or sewer taps until the premises involved have been inspected and approved by the plumbing inspector.

(Code 1978, § 24-5; Code 1993, § 82-5)

Sec. 46-6. Right of entry.

Any authorized inspector of the city shall have free access at any time to all premises supplied with any utility service by the city for the purpose of examination in order to protect the utility services from abusive use.

(Code 1978, § 24-6; Code 1993, § 82-6)

Sec. 46-7. Termination of service authorized.

The city shall have the right to disconnect or refuse to connect or reconnect any utility service for any of the following reasons:

(1) Failure to meet the applicable provisions of law.

(2) Violation of the rules and regulations pertaining to utility service.

(3) Nonpayment of bills.

(4) Willful or negligent waste of service due to improper or imperfect pipes, fixtures, appliances or otherwise.

(5) Molesting any meter, seal or other equipment controlling or regulating the supply of utility service.

(6) Theft or diversion and/or use of service without payment therefor.

(7) Vacancy of premises.

(Code 1978, § 24-7; Code 1993, § 82-7)

Sec. 46-8. Liability of city for damage.

The city shall not be liable for any damage to any customer of any utility service furnished by the city due to backflow of the sewerage system, failure of supply, interruption of service or any other cause outside the direct control of the city.

(Code 1978, § 24-8; Code 1993, § 82-8)

Sec. 46-9. Utility service—Application required.

Any person desiring any utility service furnished by the city shall make application for the same to the utility office. Such application shall contain the applicant's name, address and the uses for which such utility service is desired.

(Code 1978, § 24-9; Code 1993, § 82-9)

Sec. 46-10. Same—Not available to debtors.

The city may decline or fail to or cease to furnish utility service to any person who may be in debt to the city for any reason, except ad valorem taxes and special assessments.

(Code 1978, § 24-10; Code 1993, § 82-10)

Sec. 46-11. Same—Approval of application.

Approval of the application for any utility service by the utility office shall be deemed permission for such service.

(Code 1978, § 24-11; Code 1993, § 82-11)

Sec. 46-12. Same—Use assumed.

All premises connected to any utility service of the city shall be assumed to be using such utility service and the owner or occupant shall be charged therefor so long as such premises shall remain connected with the utility service.

(Code 1978, § 24-12; Code 1993, § 82-12)

Sec. 46-13. Not to use contrary to permit.

Any person having a permit from the city for the use of any utility service offered by the city who shall use such utility service for any purpose other than mentioned in such permit or who shall make any unauthorized changes in such service shall be deemed guilty of a misdemeanor.

(Code 1978, § 24-13; Code 1993, § 82-13)

Sec. 46-14. Damage, trespass of equipment.

It shall be unlawful for any person, not having authority to do so, to open any water hydrant or tamper with any utility service furnished by the city to consumers, or to in any other way molest, damage or trespass upon any equipment or premises belonging to the city connected with any utility service.

(Code 1978, § 24-14; Code 1993, § 82-14)

State law reference— Criminal mischief, V.T.C.A., Penal Code § 28.03; criminal trespass, V.T.C.A., Penal Code § 30.05.

Sec. 46-15. Temporary interruption of service.

The city reserves the right to cut off any utility service without notice in case of emergencies. When an interruption in service is necessary for the maintenance and improvement of the utility system, affected customers will be notified as circumstances permit.

(Code 1978, § 24-15; Code 1993, § 82-15)

Sec. 46-16. Restricting use.

The city reserves the right to at any time restrict or prevent the use of any utility service furnished by the city during periods of emergency or circumstances demanding such restriction or prevention of use.

(Code 1978, § 24-16; Code 1993, § 82-16)

Sec. 46-17. Sale of service by customer.

It shall be unlawful for any person to resell to others any utility service obtained from the city, except for master metered multifamily residential complexes with greater than 12 units, or by special arrangement with the city council.

(Code 1978, § 24-17; Code 1993, § 82-17; Ord. No. 2006-10, § 1, 10-16-2006)

Sec. 46-18. Connections to service.

Connections for any utility service furnished by the city shall be made only under the supervision of the plumbing inspector; provided, however, that all connections to the city sewer system shall be made by the department of public works.

(Code 1978, § 24-18; Code 1993, § 82-18; Ord. No. 90-02, § 24-18, 5-7-1990)

Sec. 46-19. Separate connections.

Every building, structure or consumer in the city shall have a separate utility service connection, except multifamily residential complexes with greater than 12 units shall be master metered.

(Code 1978, § 24-19; Code 1993, § 82-19; Ord. No. 2006-10, § 2, 10-16-2006)

Sec. 46-20. Unlawful connections.

Any person who shall make any connection in any manner to any utility system, whether owned by the city or not, without the prior knowledge and consent of the owner of such utility system, shall be deemed guilty of a misdemeanor.

(Code 1978, § 24-20; Code 1993, § 82-20)

Sec. 46-21. Connection or disconnection by other than city employees prohibited.

No person, other than employees of the city, shall be authorized to connect, turn on, turn off or disconnect any utility service offered by the city, or remove, replace or repair any equipment connected to any such utility service.

(Code 1978, § 24-21; Code 1993, § 82-21)

Sec. 46-22. Maintenance of system by consumer.

The consumer of any utility service furnished by the city shall maintain and keep in good repair all connections, appliances and other apparatus installed and used in connection with such utility service.

(Code 1978, § 24-22; Code 1993, § 82-22)

Sec. 46-23. Sewer line maintenance and construction.

(a) *Sanitary sewer tap.* All sanitary sewer taps to the city main line or any other city sanitary sewer line shall be constructed by the department of public works, except when otherwise noted on the city construction plans and approved by the department of public works. No customer, private contractor, private plumber or other entity shall be allowed to make connections to the city sewer line, except when such connection is allowed by the city and noted on the city-approved construction plans.

(1) The customer is responsible for the construction and maintenance of the building sewer line.

(2) For the purpose of this section, the term "building sewer line" shall be defined as the sewer line which runs between the building and the property line, utility easement, city property line, edge of the right-of-way, or other point as designated by the department of public works where the maintenance of the sewer line by the city begins.

(3) The city is responsible for the maintenance of the city main line and all sewer lines and sewer taps at all points other than the building sewer line.

(4) A current schedule of the foregoing rates, charges and deposits shall be maintained in the office of the city secretary.

(b) *Maintenance of building sewer line.* If the improper maintenance of a building sewer line causes such line to receive dirt or exterior water into the building line, the owner shall be notified by the city and may be given up to ten days, as determined by the department of public works, to repair the building sewer line. Upon a necessity for immediate repairs, the city shall be authorized to cut off the water to the property until such repairs are made. Upon major sewer problems, such as at apartments or commercial connections, the department of public works may extend the time in which to make such repairs; provided, however, the city may keep the water shut off during the repair period.

(1) If during the repair of the building sewer line it is determined by the department of public works that the sewer leak or stoppage is in the city's main and not in the building sewer line, the city will take over the repair of such leak or stoppage and the true owner may be reimbursed a reasonable amount, which amount, if any, will be as determined by the department of public works.

(2) If the owner of the building sewer line does not repair the sewer line within the time allowed after said notice, the department of public works may cause the water service to the property to be terminated, and/or may cause the sewer service to be disconnected totally from the city main line and/or may, through the city's plumbing inspector, cause to be filed a complaint in the municipal court for failing to repair such building sewer line as requested.

(3) Any owner who violates any part of subsection (b)(2) of this section shall be guilty of a misdemeanor and, upon conviction, shall be subject to punishment as provided in section 1-14 for each offense. Each day that such repairs are not made shall constitute a separate and distinct offense.

(4) If the water service has been disconnected totally from the city main line as the result of the owner of the building sewer line failing to repair the sewer line or as a result of a determination that the building sewer line should be repaired, then in that event, a reconnection fee as currently established or as hereafter adopted by resolution of the city council from time to time shall be paid by the customer prior to reconnection of the service.

(5) If the sewer service has been disconnected totally from the city main line as the result of the owner of the building sewer line failing to repair the sewer line as requested by the department of public works, and thereafter, the department of public works determines that the building sewer line has been repaired as required and is requested to reconnect to the main sewer line, the building line shall be reconnected to the city main line, but only after the city has received a fee as currently established or as hereafter adopted by resolution of the city council from time to time for reconnection of the service.

(Code 1978, § 24-23; Code 1993, § 82-23; Ord. No. 90-02, § 24-23, 5-7-1990; Ord. No. 96-20, § 2, 12-2-1996)

Sec. 46-24. Water tap and service line construction and maintenance.

(a) The city will tap the water main and extend the service line across the street right-of-way or utility easement to the property line and set the meter box.

(b) At this point, the customer will tie into the meter and construct the service line to the building. The city will maintain the water service line from the water main to the water meter located adjacent to the customer property line.

(c) The customer will maintain the building service line from the point it ties into the water meter to the customer building.

(d) A current schedule of the foregoing rates, charges and deposits shall be maintained in the office of the city secretary.

(e) No free water service shall be allowed or permitted and, to the extent that the city and its departments, except for the city's waterworks system, they shall avail themselves of the services of the city's water works system, they shall pay therefor the same rates charged other customers.

(f) The waterworks system shall be operated on a fully metered basis to its customers, without exception.

(g) No dual connections shall be allowed; dual connections being more than one user on a single meter.

(Code 1978, § 24-24; Code 1993, § 82-24)

Sec. 46-25. When connection with sewer main is compulsory.

The owner of every tract of land abutting or adjacent to Lizzie Lane or Persimmon, which tract of land is served by city sewer service, or which tract abuts on a street in which or adjacent to which a sewer line is constructed by the funding through community development block grant, shall be required to connect to such sewer line within 60 days after such sewer line is placed in service and such owners shall discharge the wastewater from any structures on such land into the sewer system; provided, however, nothing in this section shall restrict the right of the city to limit the types of discharges which are allowed into the city's sewer system.

(Code 1993, § 82-25; Ord. No. 89-07, § 24-25, 5-1-1989)

Secs. 46-26—46-53. Reserved.

ARTICLE II. RATES AND CHARGES

Sec. 46-54. Meters.

Sec. 46-55. Separate metering of irrigation systems.

Sec. 46-56. Deposits required.

Sec. 46-57. Refund of deposit.

Sec. 46-58. Determination of charges for utility services.

Sec. 46-59. Handling charge; bad check charge.

Sec. 46-60. When payment due.

Sec. 46-61. Penalty for failure to pay.

Sec. 46-62. Disconnection for nonpayment.

Sec. 46-63. Reconnection after disconnection.

Sec. 46-64. Voluntary discontinuance of service.

Sec. 46-65. Franchised public utilities.

Secs. 46-66—46-88. Reserved.

Sec. 46-54. Meters.

Meters for the measurement of utility services furnished by the city shall be furnished and installed by, and shall remain the property of, the city.

(Code 1978, § 24-34; Code 1993, § 82-46)

Sec. 46-55. Separate metering of irrigation systems.

(a) Upon approval of proper plans and specifications by the city, property owners may request and have set on public property or in an easement as set forth in this section, a water meter which will be used solely for the purpose of metering water for irrigation systems and cooling towers. The volume of water which goes through such meter shall be charged the same rate as for potable water, but shall not be subject to the sewer charge of the city.

(b) All separately metered irrigation systems and cooling tower systems, shall be tied directly into a city main and shall be equipped with such valves and apparatuses as shall be required in the sole discretion of the city. All such systems shall comply with the laws of the state regulating irrigation and cooling tower systems, which at this time consist primarily of the Irrigation Act, V.T.C.A., Water Code ch. 11

(c) The second meter must be installed on public property or in an easement granted to the city, thereby granting the city free access thereto. If a second meter for irrigation purposes or cooling towers is in addition to an existing meter and the existing meter has already been assessed an impact fee or a capital recovery fee, no impact fee shall be payable for the setting of the second meter. All other costs involved with the setting of such meter, including tap fees charged by the city, shall be the same as for the setting of a new meter under any other applicable city codes.

(d) The city shall be responsible for reading both meters when there is a dual metering system, and the utility department will, in its sole discretion, determine the amount of water being used for irrigation and for cooling towers and the amount of water being used for domestic purposes by the property owner and will, therefore, in its sole discretion, determine the amount of water which is subject only to the water charge and the amount that will be used to determine the amount of sewer charges due from the property owner.

(Code 1993, § 82-47; Ord. No. 90-04, § 24-25, 7-2-1990; Ord. No. 2000-19, § 1, 9-18-2000)

Sec. 46-56. Deposits required.

(a) *Residential.* There shall be no utility deposit for city services for customers who are the owners of the property served when the customers actually physically occupy such property or when the owners of the property are residents of the city and they own the property in which they reside and the owner is paying for all of the utilities for the property served. Along with the application for utility service, the nonowner or nonresident applicant therefor shall be required to pay the city a deposit, such deposit to be the higher of an amount as currently established or as hereafter adopted by resolution of the city council or an amount equal to two months of the customer's bill based upon an average bill for the customer; however, if such service increases to a point where such deposit is not equal to the charges for an average two-month period, the required deposit may be increased to conform thereto. Any nonowner or nonresident applicant who has placed a residential utility deposit with the city may receive a return of such deposit after such customer has established a five-year good pay record with the city. The utility deposit will be refunded upon the written request of the person making the initial deposit.

(b) *Commercial.* The utility deposit for commercial services for commercial customers shall be the higher of an amount as currently established or as hereafter adopted by resolution of the city council or an amount equal to two months of the customer's bill based upon an average bill for the customer. All commercial customers' utility bills shall be reviewed annually in January of each year to determine whether or not the deposit is equal to at least an average of two months' bills for the customer.

(1) Commercial customers who had a five-year good pay record on the effective date of the ordinance form which this section is derived or who shall later establish a five-year good pay record shall then be exempt from the deposit requirements of this subsection (b). Any commercial customer who becomes delinquent more than ten days twice in any 12-month period shall be required to meet the deposit requirements of this subsection (b).

(2) The requirement of a utility deposit for commercial customers shall apply to all commercial customers within the city.

(c) *Building contractors' deposit.* The deposit required of building contractors shall be as currently established or as hereafter adopted by resolution of the city council.

(d) *Fire hydrant meter deposit.* The deposit required for each fire hydrant meter shall be as currently established or as hereafter adopted by resolution of the city council.

(Code 1978, § 24-35; Code 1993, § 82-48; Ord. No. 88-12, 12-19-1988)

Sec. 46-57. Refund of deposit.

Refunds of deposits made for utility service shall be made upon the termination of such utility service only after payment of all indebtedness to the city for such utility service. Application of the deposit may be made in partial or total settlement of accounts when the supply is cut off for nonpayment of the bill, or for any infraction or violation of any ordinance, rule or regulation of the city relative to utility services offered by the city.

(Code 1978, § 24-36; Code 1993, § 82-49)

Sec. 46-58. Determination of charges for utility services.

The rates and charges for the consumption of utility services furnished by the city, as well as the charges and fees for connection thereto, shall be as currently established or as hereafter adopted by resolution of the city council.

(Code 1978, § 24-37; Code 1993, § 82-50; Ord. No. 93-07, § 3, 6-7-1993; Ord. No. 96-20, § 3, 12-2-1996; Ord. No. 2000-07, §§ 1—3, 4-3-2000)

Sec. 46-59. Handling charge; bad check charge.

(a) There shall be a charge per city utility customer per monthly billing to assist in defraying postage and billing costs as currently established or as hereafter adopted by resolution of the city council.

(b) The city shall impose a penalty for all checks given to the city for debts owed when such checks are returned by the financial institution. The amount of such penalty shall be as determined by the city council from time to time, and on file in the office of the city secretary.

(Code 1978, § 24-37.1; Code 1993, § 82-51)

Sec. 46-60. When payment due.

All bills for utility services furnished by the city shall be due and payable prior to 12:00 midnight of the tenth day following the date of such bill; provided, however, that if such due date shall fall on a Sunday or a legal holiday observed by the city, then such bill shall be due and payable by 12:00 midnight of the following business day.

(Code 1978, § 24-38; Code 1993, § 82-52)

Sec. 46-61. Penalty for failure to pay.

If any consumer of utility services furnished by the city shall fail to pay his bill therefor when the same is due, a penalty as determined by the city council shall be imposed.

(Code 1978, § 24-39; Code 1993, § 82-53)

Sec. 46-62. Disconnection for nonpayment.

If bills for utility services shall not be paid when the same become due, the city shall have the right to disconnect and discontinue all utility services furnished by the city to the consumer so in arrears.

(Code 1978, § 24-40; Code 1993, § 82-54)

Sec. 46-63. Reconnection after disconnection.

If utility service is disconnected for nonpayment of the bill, the consumer thereof shall have the right to have the same reconnected only upon the payment of the amount due, and in addition thereto, a reconnection fee which shall be as determined by resolution of the city council from time to time and on file in the office of the city secretary.

(Code 1978, § 24-41; Code 1993, § 82-55)

Sec. 46-64. Voluntary discontinuance of service.

Consumers wishing to discontinue the use of any utility service shall give written notice thereof at the city hall. Failure to do so shall render them liable for the payment of all bills until such notice has been given.

(Code 1978, § 24-42; Code 1993, § 82-56)

Sec. 46-65. Franchised public utilities.

The city council shall fix and approve the rates charged by any private or public utility company franchised by the city and doing business within the city. It shall be unlawful for any such public utility company or any officer or employee thereof to assess or charge for services rendered any rate other than the rate so fixed and approved.

(Code 1978, § 24-44; Code 1993, § 82-58)

Secs. 46-66—46-88. Reserved.

ARTICLE III. INDUSTRIAL WASTES

Sec. 46-89. Definitions.

Sec. 46-90. Prohibited discharges—Generally.

Sec. 46-91. Same—Chemical discharges.

Sec. 46-92. Same—Heavy metals and toxic materials.

Sec. 46-93. Same—Garbage.

Sec. 46-94. Same—Stormwater and other unpolluted drainage.

Sec. 46-95. Same—Temperature.

Sec. 46-96. Same—Radioactive wastes.

Sec. 46-97. Same—Impairment of facilities.

Sec. 46-98. Compliance with existing authority.

Sec. 46-99. Pretreatment, control of discharges; rejection.

Sec. 46-100. Review and approval.

Sec. 46-101. Requirements for traps.

Sec. 46-102. Requirements for building sewers.

Sec. 46-103. Sampling and testing.

Sec. 46-104. Payment and agreement required.

Sec. 46-105. Industrial waste charge and added costs.

Sec. 46-106. Formula for charges.

Sec. 46-107. Adjustment of charges.

Sec. 46-108. Charges for prior users.

Sec. 46-109. Conditions of permits.

Sec. 46-110. Power to enter property.

Sec. 46-111. Authority to disconnect service.

Sec. 46-112. Notice.

Sec. 46-113. Continuing prohibited discharges.

Sec. 46-114. Failure to pay.

Sec. 46-115. Grease and grit traps.

Secs. 46-116—46-143. Reserved.

Sec. 46-89. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Approving authority means the mayor and the city council or their duly authorized representative.

Biochemical oxygen demand (BOD) means the quantity of oxygen by weight, expressed in mg/l, utilized in the biochemical oxidation of organic matter under standard laboratory conditions for five days at a temperature of 20 degrees Celsius.

Building sewer means the extension from the building drain to the public sewer or other place of disposal (also called house lateral and house connection).

Chemical oxygen demand (COD) means a measure of the oxygen consuming capacity of inorganic and organic matter present in the water or wastewater expressed in mg/l as the amount of oxygen consumed from a chemical oxidant in a specific test, but not differentiating between stable and unstable organic matter and thus not necessarily correlating with biochemical oxygen demand.

Control manhole means a manhole giving access to a building sewer at some point before the building sewer discharge mixes with other discharges in the public sewer.

Control point means a point of access to a course of discharge before the discharge mixes with other discharges in the public sewer.

Garbage means animal and vegetable wastes and residue from preparation, cooking, and dispensing of food; and from the handling, processing, storage and sale of food products and produce.

Industrial waste means waste resulting from any process of industry, manufacturing, trade, or business from the development of any natural resource, or any mixture of the waste with water or normal wastewater, or distinct from normal wastewater.

Industrial waste charge means the charge made on those persons who discharge industrial wastes into the city's sewerage system.

Milligrams per liter (mg/l) means the same as parts per million and is a weight to volume ratio; the milligram per liter value multiplied by the factor 8.34 shall be equivalent to pounds per million gallons of water.

Natural outlet means any outlet into a watercourse, ditch, lake or other body of surface water or groundwater.

Normal domestic wastewater means wastewater excluding industrial wastewater discharged by a person into sanitary sewers and in which the average concentration of total suspended solids is not more than 250 mg/l and BOD is not more than 250 mg/l.

Overload means the imposition of organic or hydraulic loading on a treatment facility in excess of its engineered design capacity.

pH means the reciprocal of the logarithm (base 10) of the hydrogen ion concentration expressed in grams per liter.

Public sewer means pipe or conduit carrying wastewater or unpolluted drainage in which owners of abutting properties shall have the use, subject to control by the city.

Sanitary sewer means a public sewer that conveys domestic wastewater, industrial wastes or a combination of both, and into which stormwater, surface water, groundwater and other unpolluted wastes are not intentionally passed.

Slug means any discharge of water, wastewater, or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than 15 minutes more than five times the average 24-hour concentration or flows during normal operation.

Standard methods means the examination and analytical procedures set forth in the latest edition, at the time of analysis, of Standard Methods for the Examination of Water and Wastewater as prepared, approved, and published jointly by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation.

Storm sewer means a public sewer which carries stormwaters and surface waters and drainage and into which domestic wastewater or industrial wastes are not intentionally passed.

Stormwater means rainfall or any other forms of precipitation.

Superintendent means the water and wastewater superintendent of the city or his duly authorized deputy, agent or representative.

Suspended solids means solids, measured in mg/l, that either float on the surface of, or are in suspension in, water, wastewater or other liquids, and which are largely removable by a laboratory filtration device.

To discharge means to deposit, conduct, drain, emit, throw, run, allow to seep or otherwise release or dispose of, or to allow, permit or suffer any of these acts or omissions.

Trap means a device designed to skim, settle or otherwise remove grease, oil, sand, flammable wastes or other harmful substances.

Unpolluted wastewater means water containing:

(1) No free or emulsified grease or oil;

(2) No acids or alkalis;

(3) No phenols or other substances producing taste or odor in receiving water;

(4) No toxic or poisonous substances in suspension, colloidal state, or solution;

(5) No noxious or otherwise obnoxious or odorous gases;

(6) Not more than ten mg/l each of suspended solids and BOD; and

(7) Color not exceeding 50 units as measured by the Platinum-Cobalt method of determination as specified in Standard Methods.

Waste means rejected, unutilized or superfluous substances in liquid, gaseous, or solid form resulting from domestic, agricultural or industrial activities.

Wastewater means a combination of the water-carried waste from residences, business buildings, institutions, and industrial establishments, together with any groundwater, surface water and stormwater that may be present.

Wastewater facilities mean all facilities for collection, pumping, treating, and disposing of wastewater and industrial wastes.

Wastewater service charge means the charge on all users of the public sewer system whose wastes do not exceed in strength the concentration values established as representative of normal wastewater.

Wastewater treatment plant means any city-owned facilities, devices, and structures used for receiving, processing and treating wastewater, industrial waste, and sludges from the sanitary sewers.

Watercourse means a natural or manmade channel in which a flow of water occurs, either continuously or intermittently.

(Code 1978, § 24-56; Code 1993, § 82-81)

Sec. 46-90. Prohibited discharges—Generally.

(a) No person may discharge into public sewers any waste which by itself or by interaction with other wastes may:

(1) Injure or interfere with wastewater treatment processes or facilities;

(2) Constitute a hazard to humans or animals; or

(3) Create a hazard in receiving waters of the wastewater treatment plant effluent.

(b) All discharges shall conform to requirements of this article.

(Code 1978, § 24-57; Code 1993, § 82-82)

Sec. 46-91. Same—Chemical discharges.

(a) No discharge into public sewers may contain:

(1) Cyanide greater than 1.0 mg/l;

(2) Fluoride other than that contained in the public water supply;

(3) Chlorides in concentrations greater than 250 mg/l;

(4) Gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid or gas; or

(5) Substances causing an excessive chemical oxygen demand (COD).

(b) No waste or wastewater discharged into public waters may contain:

(1) Strong acid, iron pickling wastes or concentrated plating solutions whether neutralized or not;

(2) Fats, wax, grease or oils, whether emulsified or not, in excess of 100 mg/l or containing substances which may solidify or become viscous at temperatures between 32 and 150 degrees Fahrenheit (zero to 65 degrees Celsius);

(3) Objectionable or toxic substances, exerting an excessive chlorine requirement, to such degree that any such material received in the composite wastewater at the wastewater treatment works exceeds the limits established by the approving authority for such materials; or

(4) Obnoxious, toxic, or poisonous solids, liquids, or gases in quantities sufficient to violate the provisions of section 46-90(a).

(c) No waste, wastewater, or other substance may be discharged into public sewers which have a pH lower than 5.5 or higher than 9.5, or any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel at the wastewater facilities.

(d) All waste, wastewater or other substance containing phenols, hydrogen sulfide or other taste and odor producing substances shall conform to concentration limits established by the approving authority. After treatment of the composite wastewater, concentration limits may not exceed the requirements established by state, federal or other agencies with jurisdiction over discharges to receiving waters.

(Code 1978, § 24-58; Code 1993, § 82-83)

Sec. 46-92. Same—Heavy metals and toxic materials.

The following list of heavy metals and toxic materials, but not limited to, shall not be discharged into the sewer system.

(1) Arsenic.

(2) Barium.

(3) Boron.

(4) Cadmium.

(5) Chromium (total).

(6) Copper.

(7) Lead.

(8) Manganese.

(9) Mercury.

(10) Nickel.

(11) Selenium.

(12) Silver.

(13) Zinc.

(14) Antimony.

(15) Beryllium.

(16) Bismuth.

(17) Cobalt.

(18) Molybdenum.

(19) Tin.

(20) Uranylion.

(21) Rhenium.

(22) Strontium.

(23) Tellurium.

(24) Herbicides.

(25) Fungicides.

(26) Pesticides.

(Code 1978, § 24-59; Code 1993, § 82-84)

Sec. 46-93. Same—Garbage.

(a) No person may discharge garbage into public sewers unless it is shredded to a degree that all particles can be carried freely under the flow conditions normally prevailing in public sewers. Particles greater than one-half inch in any dimension are prohibited.

(b) The approving authority is entitled to review and approve the installation and operation of any garbage grinder equipped with a motor of three-fourths horsepower (0.76 hp metric) or greater.

(Code 1978, § 24-60; Code 1993, § 82-85)

Sec. 46-94. Same—Stormwater and other unpolluted drainage.

No person may discharge into public sanitary sewers:

(1) Unpolluted stormwater, surface water, groundwater, roof runoff or subsurface drainage;

(2) Unpolluted cooling water;

(3) Unpolluted industrial process waters; or

(4) Other unpolluted drainage.

(Code 1978, § 24-61; Code 1993, § 82-86)

Sec. 46-95. Same—Temperature.

No person may discharge liquid or vapor having a temperature higher than 150 degrees Fahrenheit (65 degrees Celsius), or any substance which causes the temperature of the total wastewater treatment plant influent to increase at a rate of ten degrees Fahrenheit (minus 12 degrees Celsius) or more per hour, or a combined total increase of plant influent temperature to 110 degrees Fahrenheit (43 degrees Celsius).

(Code 1978, § 24-62; Code 1993, § 82-87)

Sec. 46-96. Same—Radioactive wastes.

(a) No person may discharge radioactive wastes or isotopes into public sewers without the permission of the approving authority.

(b) The approving authority may establish, in compliance with applicable state and federal regulations, regulations for discharge of radioactive wastes into public sewers.

(Code 1978, § 24-63; Code 1993, § 82-88)

Sec. 46-97. Same—Impairment of facilities.

(a) No person may discharge into public sewers any substance capable of causing:

(1) Obstruction to the flow in sewers;

(2) Interference with the operation of treatment processes of facilities; or

(3) Excessive loading of treatment facilities.

(b) Discharges prohibited by subsection (a) of this section include, but are not limited to, materials which exert or cause concentrations of:

(1) Inert suspended solids greater than 250 mg/l, including, but not limited to:

a. Fuller's earth;

b. Lime slurries; and

c. Lime residues.

(2) Dissolved solids greater than 1,500 mg/l, including, but not limited to:

a. Sodium chloride; and

b. Sodium sulfate.

(3) Excessive discoloration, including, but not limited to:

a. Dye wastes; and

b. Vegetable tanning solutions.

(4) BOD, COD, or chlorine demand in excess of normal plant capacity.

(c) No person may discharge into public sewers any substance that may:

(1) Deposit grease or oil in the sewer lines in such a manner as to clog the sewers;

(2) Overload skimming and grease handling equipment;

(3) Pass to the receiving waters without being effectively treated by normal wastewater treatment processes due to the nonamenability of the substance to bacterial action; or

(4) Deleteriously affect the treatment process due to excessive quantities.

(d) No person may discharge any substance into public sewers which:

(1) Is not amenable to treatment or reduction by the processes and facilities employed; or

(2) Is amenable to treatment only to such a degree that the treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

(e) The approving authority shall regulate the flow and concentration of slugs when they may:

(1) Impair the treatment process;

(2) Cause damage to collection facilities;

(3) Incur treatment costs exceeding those for normal wastewater; or

(4) Render the waste unfit for stream disposal or industrial use.

(f) No person may discharge into public sewers solid or viscous substances which may violate subsection (a) of this section if present in sufficient quantity or size, including, but not limited to:

(1) Ashes;

(2) Cinders;

(3) Sand;

(4) Mud;

(5) Straw;

(6) Shavings;

(7) Metal;

(8) Glass;

(9) Rags;

(10) Feathers;

(11) Tar;

(12) Plastics;

(13) Wood;

(14) Unground garbage;

(15) Whole blood;

(16) Paunch manure;

(17) Hair and fleshings;

(18) Entrails;

(19) Paper products, either whole or ground by garbage;

(20) Slops;

(21) Chemical residues;

(22) Paint residues; or

(23) Bulk solids.

(Code 1978, § 24-64; Code 1993, § 82-89)

Sec. 46-98. Compliance with existing authority.

(a) Unless exception is granted by the approving authority, the public sewer system shall be used by all persons discharging:

(1) Wastewater;

(2) Industrial waste;

(3) Polluted liquids; or

(4) Unpolluted waters or liquids.

(b) Unless authorized by the state water quality board, no person may deposit or discharge any waste included in subsection (a) of this section on public or private property in or adjacent to any:

(1) Natural outlet.

(2) Watercourse.

(3) Storm sewer.

(4) Other area within the jurisdiction of the city.

(c) The approving authority shall verify prior to discharge that wastes authorized to be discharged will receive suitable treatment within the provisions of laws, regulations, ordinances, rules and orders of federal, state and local governments.

(Code 1978, § 24-65; Code 1993, § 82-90)

Sec. 46-99. Pretreatment, control of discharges; rejection.

(a) If discharges or proposed discharges into public sewers may deleteriously affect wastewater facilities, processes, equipment or receiving waters; create a hazard to life or health; or create a public nuisance; the approving authority shall require:

(1) Pretreatment to an acceptable condition for discharge to the public sewers;

(2) Control over the quantities and rates of discharge; and

(3) Payment to cover the cost of handling and treating the wastes.

(b) The approving authority is entitled to determine whether a discharge or proposed discharge is included under subsection (a) of this section.

(c) The approving authority shall reject wastes for discharge into the public sewers when:

(1) It determines that a discharge or proposed discharge is included under subsection (a) of this section; and

(2) The discharger does not meet the requirements of subsection (a) of this section.

(Code 1978, § 24-66; Code 1993, § 82-91)

Sec. 46-100. Review and approval.

(a) If pretreatment or control is required, the approving authority shall review and approve design and installation of equipment and processes.

(b) The design and installation of equipment and processes must conform to all applicable statutes, codes, ordinances and other laws.

(c) Any person responsible for discharges requiring pretreatment, flow-equalizing or other facilities shall provide and maintain the facilities in effective operating condition at his own expense.

(Code 1978, § 24-67; Code 1993, § 82-92)

Sec. 46-101. Requirements for traps.

(a) Discharges into public sewers requiring a trap include:

(1) Grease or waste containing grease in excessive amounts;

(2) Oil;

(3) Sand;

(4) Flammable wastes; and

(5) Other harmful ingredients.

(b) Any person responsible for discharges requiring a trap shall at his own expense and as required by the approving authority:

(1) Provide equipment and facilities of a type and capacity approved by the approving authority;

(2) Locate the trap in a manner that provides ready and easy accessibility for cleaning and inspection; and

(3) Maintain the trap in effective operating condition.

(Code 1978, § 24-68; Code 1993, § 82-93)

Sec. 46-102. Requirements for building sewers.

Any person responsible for discharges through a building sewer carrying industrial wastes shall, at his own expense and as required by the approving authority:

(1) Install an accessible and safely located control manhole;

(2) Install meters and other appurtenances to facilitate observation, sampling and measurement of the waste; and

(3) Maintain the equipment and facilities.

(Code 1978, § 24-69; Code 1993, § 82-94)

Sec. 46-103. Sampling and testing.

(a) Sampling shall be conducted according to customarily accepted methods, reflecting the effect of constituents upon the sewage works and determining the existence of hazards to health, life, limb, and property.

(b) Examination and analysis of the characteristics of waters and wastes required by this article shall be:

(1) Conducted in accordance with the latest edition of Standard Methods; and

(2) Determined from suitable samples taken at the control manhole provided or other control point authorized by the approving authority.

(c) BOD and suspended solids shall be determined from composite sampling.

(d) The city may select an independent firm or laboratory to determine flow, BOD and suspended solids.

(e) The city is entitled to select the time of sampling at its sole discretion so long as at least annual samples are taken.

(Code 1978, § 24-70; Code 1993, § 82-95)

Sec. 46-104. Payment and agreement required.

(a) Persons making discharges of industrial waste shall pay a charge to cover the cost of collection and treatment.

(b) When discharges of industrial waste are approved by the approving authority, the city or its authorized representative shall enter into an agreement or arrangement providing:

(1) Terms of acceptance by the city; and

(2) Payment by the person making the discharge.

(Code 1978, § 24-70; Code 1993, § 82-96)

Sec. 46-105. Industrial waste charge and added costs.

(a) If the volume or character of the waste to be treated by the city does not cause overloading to the sewage collection, treatment, or disposal facilities of the city, then prior to approval, the city and the person making the discharge shall enter into an agreement which provides that the discharger pay an industrial waste charge to be determined from the schedule of charges.

(b) If the volume or character of the waste to be treated by the city requires that wastewater collections, treatment, or other disposal facilities of the city be improved, expanded, or enlarged in order to treat the waste, then prior to approval, the city and the person making the discharge shall enter into an agreement which provides that the discharger pay in full all added costs the city may incur due to acceptance of the waste.

(c) The agreement entered into pursuant to subsection (a) of this section shall include but not be limited to:

(1) Amortization of all capital outlay for collecting and treating the waste, including new capital outlay and the proportionate part of the value of the existing system used in handling and treating the waste;

(2) Operation and maintenance costs including salaries and wages, power costs, costs of chemicals and supplies, proper allowances for maintenance, depreciation, overhead, and office expense; and

(3) Amortization shall be completed in a 20-year period and payment shall include all debt service costs.

(Code 1978, § 24-72; Code 1993, § 82-97)

Sec. 46-106. Formula for charges.

Industrial waste charges for discharges into the public sewers shall be calculated by the following formula:

$$Ci = KW (BOD/200 + SS/200)$$

Where

Ci	=	Charge to industrial user
K	=	Percent (expressed as a decimal fraction)
W	=	Water charge in $
BOD	=	Total BOD in mg/l
SS	=	Total SS in mg/l

(Code 1978, § 24-73; Code 1993, § 82-98)

Sec. 46-107. Adjustment of charges.

(a) The city shall adjust charges at least annually to reflect changes in the characteristics of wastewater based on the results of sampling and testing.

(b) Increases in charges shall be retroactive for two billing periods and shall continue for six billing periods unless subsequent tests determine that the charge should be further increased.

(c) The city shall review, at least semiannually, but not less than annually, the basis for determining charges, and shall adjust the unit treatment cost in the formula to reflect increases or decreases in wastewater treatment costs based on the previous year's experience.

(d) The city shall bill the discharger by the month and shall show industrial waste charges as a separate item on the regular bill for water and sewer charges. The discharger shall pay monthly in accordance with practices existing for payment of sewer charges.

(Code 1978, § 24-74; Code 1993, § 82-99)

Sec. 46-108. Charges for prior users.

A person discharging industrial wastes into public sewers prior to the effective date of the ordinance from which this article is derived may continue without penalty so long as he:

(1) Does not increase the quantity or quality of discharge, without permission of the approving authority;

(2) Had discharged the industrial waste at least six months prior to the effective date of Ordinance No. 75-5; and

(3) Applied for and was granted a permit no later than 150 days after the effective date of Ordinance No. 75-5.

(Code 1978, § 24-75; Code 1993, § 82-100)

Sec. 46-109. Conditions of permits.

(a) The city may grant a permit to discharge to persons meeting all requirements of the savings clause provided that the person:

(1) Submitted an application within 120 days after the effective date of Ordinance No. 75-5 on forms supplied by the approving authority;

(2) Secured approval by the approving authority of plans and specifications for pretreatment facilities when required;

(3) Had complied with all requirements for agreements or arrangements, including, but not limited to, provisions for:

a. Payment of charges;

b. Installation and operation of pretreatment facilities; and

c. Sampling and analysis to determine quantity and strength; and

(4) Provided a sampling point subject to the provisions of this article and approval of the approving authority.

(b) A person applying for a new discharge of wastes into public sewers shall:

(1) Meet all conditions of subsection (a) of this section; and

(2) Secure a permit prior to discharging any waste.

(Code 1978, § 24-76; Code 1993, § 82-101)

Sec. 46-110. Power to enter property.

(a) The superintendent and other duly authorized employees of the city bearing proper credentials and identification are entitled to enter any public or private property at any reasonable time for the purpose of enforcing this article.

(b) Anyone acting under this authority shall observe the establishment's rules and regulations concerning safety, internal security and fire protection.

(c) Except when caused by negligence or failure of the company to maintain safe conditions, the city shall indemnify the company against loss or damage to its property by city employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the sampling operation.

(d) The superintendent and other duly authorized employees of the city bearing proper credentials and identification are entitled to enter all private properties through which the city holds a negotiated easement for the purposes of:

(1) Inspection, observation, measurement, sampling or repair;

(2) Maintenance of any portion of the sewerage system lying within the easements; and

(3) Conducting any other authorized activity.

All activities shall be conducted in full accordance with the terms of the negotiated easement pertaining to the private property involved.

(e) No person acting under authority of this section may inquire into any processes including metallurgical, chemical, oil refining, ceramic, paper or other industries beyond that point having a direct bearing on the kind and source of discharge to the public sewers.

(Code 1978, § 24-77; Code 1993, § 82-102)

Sec. 46-111. Authority to disconnect service.

(a) The city may terminate water and wastewater disposal service and disconnect an industrial customer from the system when:

(1) Acids or chemicals damaging to sewer lines or treatment process are released to the sewer causing rapid deterioration of these structures or interfering with proper conveyance and treatment of wastewater;

(2) A governmental agency informs the city that the effluent from the wastewater treatment plant is no longer of a quality permitted for discharge to a watercourse, and it is found that the customer is delivering wastewater to the city's system that cannot be sufficiently treated or requires treatment that is not provided by the city as normal domestic treatment; or

(3) The industrial customer:

a. Discharges industrial waste or wastewater that is in violation of the permit issued by the approving authority;

b. Discharges wastewater at an uncontrolled, variable rate in sufficient quantity to cause an imbalance in the wastewater treatment system;

c. Fails to pay monthly bills for water and sanitary sewer services when due; or

d. Repeats a discharge of prohibited wastes to public sewers.

(b) If service is disconnected pursuant to subsection (a)(2) of this section, the city shall:

(1) Disconnect the customer;

(2) Supply the customer with the governmental agency's report and provide the customer with all pertinent information; and

(3) Continue disconnection until such time as the industrial customer provides additional pretreatment or other facilities designed to remove the objectionable characteristics from his industrial wastes.

(Code 1978, § 24-78; Code 1993, § 82-103)

Sec. 46-112. Notice.

The city shall serve persons discharging in violation of this article with written notice stating the nature of the violation and providing a reasonable time limit for satisfactory compliance.

(Code 1978, § 24-79; Code 1993, § 82-104)

Sec. 46-113. Continuing prohibited discharges.

No person may continue discharging in violation of this article beyond the time limit provided in the notice.

(Code 1978, § 24-80; Code 1993, § 82-105)

Sec. 46-114. Failure to pay.

In addition to sanctions provided for by this article, the city is entitled to exercise sanctions provided for by the other ordinances of the city for failure to pay the bill for water and sanitary sewer service when due.

(Code 1978, § 24-82; Code 1993, § 82-107)

Sec. 46-115. Grease and grit traps.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Director means the city's director of public works or the director's designated representative.

Generator means any commercial establishment, profit or nonprofit, which produces grease trap and grit trap wastes.

Grease and grit trap wastes means wastes collected within grease traps and grit traps, as regulated by 31 Texas Admin. Code §§ 330.531 and 330.532, as amended.

Manifest means the manifest for transportation/disposal of grease and grit trap wastes as required by the state water commission (31 Texas Admin. Code §§ 330.445 and 330.906, as amended).

(b) *Coverage.* Every generator which operates and maintains a grease trap or grit trap in the city is governed by this section. The city's department of public works shall maintain a list of generators for purposes of administering this section. The director of public works, or the director's designated representative, shall be responsible for the administration of this section.

(c) *Manifest reporting to the city.* A generator shall mail (or may deliver) a copy of the manifest to the director of public works, attention: Utilities, City of Tomball, 501 James Street, Tomball, Texas 77375 (phone number 351-5484, at the service center), within 15 days after the date of the manifest. The director will accept a legible Xerox copy of the manifest which is provided to the generator by a transporter.

(d) *Monitoring.* Based upon the information collected from the manifests the director of public works will monitor the cleaning and maintenance of grease and grit traps in the city, taking into consideration the generator's expected output of grease and/or grit wastes. This information may then be used to determine whether a generator's grease and grit trap wastes are entering the waste stream for treatment at the municipal sewage treatment plant.

(Code 1993, § 82-108; Ord. No. 93-05, §§ 1—6, 5-3-1993)

Secs. 46-116—46-143. Reserved.

ARTICLE IV. WATER, WASTEWATER, AND DRAINAGE CAPITAL RECOVERY FEES

DIVISION 1. - GENERALLY

DIVISION 2. - WATER CAPITAL RECOVERY FEES

DIVISION 3. - WASTEWATER CAPITAL RECOVERY FEES

DIVISION 4. - DRAINAGE CAPITAL RECOVERY FEES

DIVISION 1. GENERALLY

Sec. 46-144. Intent.

Sec. 46-145. Authority.

Sec. 46-146. Definitions.

Sec. 46-147. Applicability of capital recovery fees.

Sec. 46-148. Assessment and collection of capital recovery fees.

Sec. 46-149. Establishment of water, wastewater, and drainage service areas.

Sec. 46-150. Land use assumptions.
Sec. 46-151. Service units.
Sec. 46-152. Capital recovery fees per service unit.
Sec. 46-153. Assessment of capital recovery fees.
Sec. 46-154. Calculation of capital recovery fees.
Sec. 46-155. Collection of capital recovery fees.
Sec. 46-156. Establishment of accounts.
Sec. 46-157. Use of proceeds of capital recovery fee accounts.
Sec. 46-158. Appeals.
Sec. 46-159. Refunds.
Sec. 46-160. Updates to plan and revision of fees.
Sec. 46-161. Functions of advisory committee.
Sec. 46-162. Agreement for capital improvements.
Sec. 46-163. Use of other financing mechanisms.
Sec. 46-164. Capital recovery fees as additional and supplemental regulation.
Sec. 46-165. Relief procedures.
Sec. 46-166. Schedule of maximum capital recovery fees.
Secs. 46-167—46-185. Reserved.

Sec. 46-144. Intent.

This article is intended to impose water, wastewater, and drainage capital recovery fees, as established in this article, in order to finance public facilities, the demand for which is generated by new development in the designated service area.

(Code 1993, § 82-132; Ord. No. 2003-02, § 2(82-132), 3-17-2003)

Sec. 46-145. Authority.

The city is authorized to enact the ordinance from which this article is derived in accordance with V.T.C.A., Local Government Code ch. 395, which authorizes home rule cities, among others, to enact or impose impact fees (capital recovery fees) on land within their corporate boundaries or extraterritorial jurisdictions, as charges or assessments imposed against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to such new development; and by the city Charter. The provisions of this article shall not be construed to limit the power of the city to adopt such article pursuant to any other source of local authority, nor to utilize any other methods or powers otherwise available for accomplishing the purposes set forth in this ordinance, either in substitution of or in conjunction with this article. Guidelines may be developed by resolution or otherwise to implement and administer this article.

(Code 1993, § 82-133; Ord. No. 2003-02, § 2(82-133), 3-17-2003)

Sec. 46-146. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Area-related facility means a capital improvement or facility expansion which is designated in the capital improvements plan and which is not a site-related facility. The term "area-related facility" may include a capital improvement which is located off site, within or on the perimeter of the development site.

Assessment means the determination of the amount of the maximum capital recovery fee per service unit which can be imposed on new development pursuant to this article.

Building permit means written permission issued by the city for the construction, repair, alternation or addition to a structure.

Capital construction cost of service means costs of constructing capital improvements or facility expansions, including and limited to the construction contract price, surveying and engineering fees, land acquisition costs (including land purchases, court awards and costs, attorney's fees and expert witness fees), and the fees actually paid or contracted to be paid to an independent qualified engineer or financial consultant preparing or updating the capital improvements plan who is not an employee of the city.

Capital improvements advisory committee or *advisory committee* means the advisory committee appointed by the city council, consisting of at least five members who are not employees of the city, not less than 40 percent of which shall be representatives of the real estate, development or building industries, and including one member representing the extraterritorial jurisdiction of the city; or consisting of the planning and zoning commission, including one regular or ad hoc member who is not an employee of the city and which is representative of the real estate, development or building industry, and one representative of the extraterritorial jurisdiction area of the city; which committee is appointed to regularly review and update the capital improvements program in accordance with the requirements of V.T.C.A., Local Government Code § 395.001 et seq., or its successor statute.

Capital improvements program or *capital improvements plan (CIP)* means the plan which identifies water, wastewater, and drainage capital improvements or facility expansions pursuant to which capital recovery fees may be assessed.

Capital recovery fee means the fee to be imposed upon new development, calculated based upon the costs of facilities in proportion to development creating the need for such facilities. The term "capital recovery fee" does not include dedication of rights-of-way or easements, construction or dedication of site-related water distribution, wastewater collection, or drainage facilities required by other ordinances or this Code; or pro rata fees placed in trust funds for the purpose of reimbursing developers for oversizing or constructing water or sewer mains or lines or drainage facilities.

Certificate of occupancy means a certificate issued by the building official which certifies that all code-required systems have been inspected and are in compliance with the city codes and that the building may be occupied.

Commercial development means all development that is neither residential nor industrial.

Comprehensive plan (master plan) means the comprehensive long-range plan, adopted by the city council, which is intended to guide the growth and development of the city and which includes analysis, recommendations and proposals for the city regarding such topics as population, economy, housing, transportation, community facilities and land use.

Credit means the amount of the reduction of a capital recovery fee for fees, payments or charges for the same type of capital improvements for which the fee has been assessed.

Director means the city's director of public works.

Drainage facility means those improvements or facility expansions to provide drainage service, including land or easements, more particularly described in the CIP.

Drainage facility expansion means expansion of the capacity of any existing drainage improvement identified in the CIP, for the purpose of serving new development, not including the repair, maintenance, modernization or expansion of such existing drainage facility to serve existing development.

Drainage improvements plan means that portion of the CIP, as may be amended from time to time, which identifies the drainage facilities or drainage expansions and their associated costs, which are necessitated by and attributable to new development, and for a period not to exceed ten years, and which are to be financed in whole or in part through the imposition of drainage facilities capital recovery fees, pursuant to this article.

Facility expansion means the expansion of the capacity of an existing facility which serves the same function as an otherwise necessary new capital improvement in order that the existing facility may serve new development. Facility expansion does not include the repair, maintenance, modernization or expansion of an existing facility to better serve existing development.

Final subdivision plat means the map, drawing or chart on which is provided a subdivider's plan of a subdivision, and which has received final approval by the planning and zoning commission or the city council, and which is recorded with the office of the county clerk.

Growth-related costs means capital construction costs of service related to providing additional service units to new development, either from excess capacity in existing facilities, from facility expansions or from new capital facilities. The term "growth-related costs" does not include:

(1) Construction, acquisition or expansion of public facilities or assets other than capital improvements or facility expansions identified in the capital improvements plan;

(2) Repair, operation or maintenance of existing or new capital improvements or facility expansions;

(3) Upgrading, updating, expanding or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;

(4) Upgrading, updating, expanding or replacing existing capital improvements to provide better service to existing development;

(5) Administrative and operating costs of the city; and

(6) Principal payments and interest or other finance charges on bonds or other indebtedness, except for such payments for growth-related facilities contained in the capital improvements program.

Industrial development means development which will be assigned to the industrial customer class of the water or wastewater utilities; generally development in which goods are manufactured, or development which is ancillary to such manufacturing activity.

Land use assumptions means projections of changes in land uses, densities, intensities and population therein over at least a ten-year period, adopted by the city, as may be amended from time to time, upon which the capital improvement plan is based.

Living unit equivalent (LUE) means a basis for establishing equivalency among and within various customer classes based upon the relationship of the continuous duty maximum flow rate in gallons per minute for a water meter of a given size and type compared to the continuous duty maximum flow rate in gallons per minute for a five-eighths inch diameter simple water meter, using American Water Works Association C700-C703 standards. The table of LUE equivalents can be found in the appropriate fee schedules adopted by resolution of the city council from time to time.

Multifamily residence means a structure on a single lot designed to accommodate more than one dwelling unit.

New development means a subdivision of land; or the construction, reconstruction, redevelopment, conversion, structural alteration, relocation or enlargement of any structure; or any use or extension of the use of land; any of which increases the number of service units.

Offset means the amount of the reduction of a capital recovery fee designed to fairly reflect the value of area-related facilities, pursuant to rules herein established or administrative guidelines, provided and funded by a developer pursuant to the city's subdivision regulations or requirements.

Residential development means a lot developed for use and occupancy as a single-family or multifamily residence, as authorized by chapter 48.

Service area means an area within the corporate boundaries and within the extraterritorial jurisdiction as defined by V.T.C.A., Local Government Code § 43.001, to be served by the water, wastewater, and drainage capital improvements or facilities expansions specified in the capital improvements program applicable to the service area.

Service unit means a standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards for a particular category of capital improvements or facility expansions, expressed in living units equivalent.

Single-family residence means a single-family dwelling unit.

Site-related facility means improvement or facility which is for the primary use or benefit of a new development and/or which is for the primary purpose of safe and adequate provision of water, wastewater, or drainage facilities to serve the new development, and which is not included in the capital improvements plan, and for which the developer or property owner is solely responsible under subdivision and other applicable regulations.

Tap purchase means the filing with the city of a written application for a water or wastewater tap and the acceptance of applicable fees by the city. The term "tap purchase" shall not be applicable to a master water meter or master wastewater connection purchased from the city by a wholesale customer such as a water district, political subdivision of the state, or other wholesale utility customer; nor shall it be applicable to a meter purchased for and exclusively dedicated to fire protection.

Wastewater facility means improvement for providing wastewater service, including, but not limited to, land or easements, treatment facilities, lift stations or interceptor mains. The term "wastewater facility" excludes wastewater lines or mains which are constructed by developers, the costs of which are reimbursed from pro rata charges paid by subsequent users of the facilities and which are maintained in dedicated trusts. The term "wastewater facilities" also excludes dedication of rights-of-way or easements or construction or dedication of on-site wastewater collection facilities required by valid ordinances of the city and necessitated by and attributable to the new development.

Wastewater facility expansion means expansion of the capacity of any existing wastewater improvement for the purpose of serving new development, not including the repair, maintenance, modernization or expansion of an existing wastewater facility to serve existing development.

Wastewater improvements plan means that portion of the CIP, as may be amended from time to time, which identifies the wastewater facilities or wastewater expansions and their associated costs which are necessitated by and which are attributable to new development, and for a period not to exceed ten years, and which are to be financed in whole or in part through the imposition of wastewater facilities capital recovery fees, pursuant to this article.

Water facility means an improvement for providing water service, including, but not limited to, land or easements, water supply facilities, treatment facilities, pumping facilities, storage facilities or transmission mains. The term "water facility" excludes water lines or mains which are constructed by developers, the costs of which are reimbursed from pro rata charges paid by subsequent users of the facilities and which are maintained in dedicated trusts. The term "water facilities" also exclude dedication of rights-of-way or easements or construction or dedication of on-site water distribution facilities required by valid ordinances of the city and necessitated by and attributable to the new development.

Water facility expansion means expansion of the capacity of any existing water improvement for the purpose of serving new development, not including the repair, maintenance, modernization or expansion of an existing water facility to serve existing development.

Water improvements plan means that portion of the CIP, as may be amended from time to time, which identifies the water facilities or water expansions and their associated costs which are necessitated by and which are attributable to new development, and for a period not to exceed ten years, and which are to be financed in whole or in part through the imposition of water facilities capital recovery fees, pursuant to this article.

Wholesale customers means water or wastewater customers of the city's utilities which purchase utility service at wholesale rates for resale to their retail customers.

(Code 1993, § 82-134; Ord. No. 2003-02, § 2(82-134), 3-17-2003)

Sec. 46-147. Applicability of capital recovery fees.

(a) This article shall be uniformly applicable to new development which occurs within the water, wastewater, and drainage service areas, except for new development which occurs within the service areas of the city's wholesale customers. It shall be the policy of the city to revise contracts with wholesale customers, when the terms of current contracts are completed, to effectively charge wholesale customers capital recovery fees for the new development within the wholesale customers' service area, such fees being equivalent to capital recovery fees charged to retail customers of the city's utilities.

(b) No new development shall be exempt from the assessment of capital recovery fees, except as provided under subsection (c) of this section. However, the city council may determine that, for reasons of applicant hardship or for reasons of general community welfare, the applicable fees may be paid by the city into the appropriate utility funds in lieu of payment by the applicant.

(c) Residents of the city who convert individual septic or other individual sewage treatment systems to the city's centralized wastewater system shall be exempt from the payment of wastewater capital recovery fees.

(Code 1993, § 82-135; Ord. No. 2003-02, § 2(82-135), 3-17-2003)

Sec. 46-148. Assessment and collection of capital recovery fees.

Capital recovery fees imposed by this article shall be assessed and collected in accordance with the provisions of V.T.C.A., Local Government Code ch. 395.

(Code 1993, § 82-136; Ord. No. 2003-02(82-136), § 2, 3-17-2003)

Sec. 46-149. Establishment of water, wastewater, and drainage service areas.

(a) Water, wastewater, and drainage service areas are hereby established as each are identified and described in the CIP attached to the ordinance from which this article is derived and made a part of this article.

(b) The service areas shall be established consistent with any facility service area established in the CIP for each utility. Additions to the service area may be designated by the city council consistent with the procedure set forth in V.T.C.A., Local Government Code ch. 395.

(Code 1993, § 82-137; Ord. No. 2003-02, § 2(82-137), 3-17-2003)

Sec. 46-150. Land use assumptions.

Land use assumptions used in the development of the capital recovery fees are hereby adopted and are more particularly described in the CIP attached to the ordinance from which this section is derived and made a part of this article. These assumptions may be revised by the city council according to the procedure set forth in V.T.C.A., Local Government Code ch. 395.

(Code 1993, § 82-138; Ord. No. 2003-02, § 2(82-138), 3-17-2003)

Sec. 46-151. Service units.

(a) Service units are established in accordance with generally accepted engineering and planning standards.

(b) Service units for water and wastewater capital recovery fees shall be calculated as follows:

(1) For platted lots and for lots on which new development will occur without platting, and for which no water or wastewater meter has been purchased, service units are established as follows:

a. Residential new development (single-family residences): 1.55 water LUEs per acre; 1.55 wastewater LUEs per acre.

b. Residential new development (multifamily residences): 4.47 water LUEs per acre; 4.47 wastewater LUEs per acre.

c. Commercial new development: 1.94 water LUEs per acre 1.94 wastewater LUEs per acre.

d. Industrial new development: 1.72 water LUEs per acre 1.30 wastewater LUEs per acre.

(2) Before issuance of a certificate of occupancy, service units shall be calculated based on living units equivalent as determined by the size of the water meters for the development, or, alternatively, based on the recommendation of the director as a result of an engineering report prepared by a qualified professional engineer licensed to perform such professional engineering services in the state, which demonstrates that the number of LUEs of service for the new development will be more than those indicated by the size of the water meter.

(3) If the director determines that the water pressure in the city's transmission main is significantly higher or lower than standard pressure such that the size of the water meter is not indicative of actual service demand, the director may adjust the number of LUEs based on a smaller or larger sized meter that more accurately reflects the flow rate and the system pressure conditions.

(4) If a fire demand meter (tap) is purchased for a property, the meter size utilized to calculate the number of LUEs shall be the dimension of the portion of the fire demand meter that reflects the meter size which would provide only domestic service to the property. Such reduced meter size shall then be utilized to calculate the number of LUEs.

a. The meter types used to calculate the number of LUEs shall be either simple or compound meters.

b. To avoid the use of fire flow volumes for domestic usage, the owner of any property for which a fire demand meter is purchased shall be required to execute a restrictive covenant on a form approved by the city attorney, which covenant shall acknowledge the right of the city to assess such fees to subsequent owners of the property. Such covenant shall be executed prior to the purchase of the fire demand meter and shall be filed in the deed records of the county.

(5) Upon issuance of certificate of occupancy for construction on lots for which no water meter has been purchased, service units shall be established by a professional engineer licensed in the state, and shall be approved by the director of public works.

(c) A service unit for calculation of drainage capital recovery fees shall be per developed acre.

(d) The city council may revise the service units designation according to the procedure set forth in V.T.C.A., Local Government Code ch. 395, or its successor statute.

(Code 1993, § 82-139; Ord. No. 2003-02, § 2(82-139), 3-17-2003)

Sec. 46-152. Capital recovery fees per service unit.

The maximum capital recovery fee per service unit for each service area shall be computed by dividing the growth-related capital construction cost of service in the service area identified in the capital improvements plan for that category of capital improvements, by the total number of projected service units anticipated within the service area which are necessitated by and attributable to new development, based on the land use assumptions for that service area, and subtracting credits in the form of future rate or tax contributions to CIP funding.

(Code 1993, § 82-140; Ord. No. 2003-02, § 2(82-140), 3-17-2003)

Sec. 46-153. Assessment of capital recovery fees.

(a) The approval of any subdivision of land or of any new development shall include as a condition the assessment of the capital recovery fee value applicable to such development.

(b) Assessment of the capital recovery fee value for any new development shall be made in accordance with the provisions of V.T.C.A., Local Government Code ch. 395.

(c) Following assessment of the capital recovery fee values pursuant to subsection (b) of this section, no additional capital recovery fees or increases thereof shall be assessed against that development unless the number of service units increases, as set forth under section 46-151

(d) Following the lapse or expiration of approval for a plat, a new assessment must be performed at the time a new application for such development is filed.

(Code 1993, § 82-141; Ord. No. 2003-02, § 2(82-141), 3-17-2003)

Sec. 46-154. Calculation of capital recovery fees.

(a) Following the request for new development as provided in section 46-153, the city shall compute capital recovery fees due for the new development in the following manner:

  (1) The amount of acreage of each land use type shall be determined from the subdivision plat or other appropriate document;

  (2) The applicable service units per acre shall be determined according to section 46-151

  (3) The acreage of each land use type shall be multiplied by the applicable service units per acre, respectively, and service units for all land uses for the development shall be summed;

  (4) The total service units shall be multiplied by the appropriate per-unit fee amount determined as set forth in section 46-152; and

  (5) Fee credits and offsets shall be subtracted as determined by the process prescribed in section 46-156

(b) Upon application for a building permit, the city shall compute the capital recovery fees due in the following manner:

  (1) The number of LUEs shall be determined by the size of the water meter purchased or by evaluation of the director of public works at the time of tap purchase, as determined according to section 46-151

  (2) LUEs shall be summed for all meters purchased for the development;

  (3) The total service units shall be multiplied by the appropriate per-unit fee value determined as set forth in section 46-152; and

  (4) Fee credits and offsets shall be subtracted.

(c) The amount of each capital recovery fee due for a new development, whether calculated at time of final plat approval or at time of building permit issuance, shall not exceed an amount computed by multiplying the fee value assessed per service unit pursuant to section 46-152 by the number of service units generated by the development.

(Code 1993, § 82-142; Ord. No. 2003-02, § 2(82-142), 3-17-2003)

Sec. 46-155. Collection of capital recovery fees.

(a) No certificate of occupancy shall be issued until all capital recovery fees have been paid to the city, or until a "notice of capital recovery fee due is recorded as provided in this section, except as provided otherwise by contract.

(b) For a development which has paid capital recovery fees under the provisions of this article or its predecessors, after final plat approval and prior to certificate of occupancy issuance, fee adjustments shall be made as follows:

(1) The number of LUEs determined at the time of final plat recordation, if any, shall be compared to the number of LUEs determined by the size of the water meter purchased or by evaluation of the director of public works at the time of tap purchase, as set forth in section 46-151

(2) If the number of LUEs determined by the size and type of the water meter for the development is greater than the number of LUEs attributed to the development at the time of plat recordation, the additional LUEs shall be multiplied by the appropriate per-unit fee value assessed in accordance with section 46-153, and such additional capital recovery fees shall be collected at the time of certificate of occupancy issuance.

(3) If the number of LUEs determined by the size and type of the water meter for the development is less than the number of LUEs attributed to the development at the time of plat recordation, the excessive LUEs shall be multiplied by the appropriate per-unit fee value assessed in accordance with section 46-153 for refund to the fee payer according to the provisions of section 46-159

(c) In the event that a water tap is sold as the result of a conversion from an individual well, the appropriate fee shall be collected at the time of tap purchase, except as provided below:

(1) At the option of the applicant, and with the approval of the director, the capital recovery fees for such customers may be paid in increments over a period of not more than three years, with interest computed on the unpaid balance at the statutory rate as set forth in V.T.C.A., Finance Code ch. 302.

(2) If the applicant chooses the extended payment option set forth in subsection (c)(1) of this section, the applicant shall, as a condition of tap sale, sign and file with the city clerk, and consent to the recordation of a "notice of capital recovery fee due," which shall be recorded as a lien against the subject property. The city shall release the lien held only upon payment in full of the capital recovery fees and any late penalties and applicable interest.

(3) Late payments shall subject the applicant to a penalty of ten percent of the amount due and additional interest in addition to all other remedies available to the city as lienholder.

(d) Upon the request of an applicant, the city may at its sole discretion enter into a payment agreement subject to the provisions below and according to guidelines established by the city, as amended from time to time:

(1) If the applicant chooses this delayed payment option, the applicant shall, as a condition of plat approval, sign and file with the city clerk, and consent to the recordation of, a notice of capital recovery fee due, which shall be recorded as a lien against the subject property. The city shall release the lien held only upon payment in full of the capital recovery fees due on any property with such lien.

(2) No provision of this article shall be construed to limit the powers of the city pursuant to any other source of local authority, including the authority to enter into contracts and to charge the statutory rate of interest on obligations to the city as set forth in V.T.C.A., Finance Code ch. 302.

(Code 1993, § 82-143; Ord. No. 2003-02, § 2(82-143), 3-17-2003)

Sec. 46-156. Establishment of accounts.

(a) The city finance department shall establish separate interest-bearing accounts, in a bank authorized to receive deposits of city funds, for each major category of capital facility for which a capital recovery fee is imposed pursuant to this article.

(b) Interest earned by each account shall be credited to that account and shall be used solely for the purposes specified for funds authorized in section 46-157

(c) The city's finance department shall establish adequate financial and accounting controls to ensure that capital recovery fees disbursed from the account are utilized solely for the purposes authorized in section 46-157. Disbursement of funds shall be authorized by the city at such times as are reasonably necessary to carry out the purposes and intent of this article; provided, however, that any fee paid shall be expended within a reasonable period of time, but not to exceed ten years from the date the fee is deposited into the account.

(d) The city finance department shall maintain and keep adequate financial records for each such account, which shall show the source and disbursement of all revenues, which shall account for all monies received, and which shall ensure that the disbursement of funds from each account shall be used solely and exclusively for the provision of projects specified in the capital improvements program as area-related capital projects. The city finance department shall also maintain such records as are necessary to ensure that refunds are appropriately made under the provision in section 46-159

(Code 1993, § 82-146; Ord. No. 2003-02, § 2(82-146), 3-17-2003)

Sec. 46-157. Use of proceeds of capital recovery fee accounts.

(a) The capital recovery fees collected may be spent only for the purposes for which they were imposed and within the service area for which they were adopted, as shown in the CIP and as authorized by this article. The capital recovery fees collected pursuant to this article may be used to finance or to recoup capital construction costs of service. Capital recovery fees may also be used to pay the principal sum and interest and other finance costs on bonds, notes or other obligations issued by or on behalf of the city to finance such capital improvements or facilities expansions.

(b) Capital recovery fees collected pursuant to this article shall not be used to pay for any of the following expenses:

(1) Construction, acquisition or expansion of capital improvements or assets other than those identified for the appropriate utility in the capital improvements plan;

(2) Repair, operation or maintenance of existing or new capital improvements or facilities expansions;

(3) Upgrading, expanding or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;

(4) Upgrading, expanding or replacing existing capital improvements to provide better service to existing development; provided, however, that capital recovery fees may be used to pay the costs of upgrading, expanding or replacing existing capital improvements in order to meet the need for new capital improvements generated by new development; or

(5) Administrative and operating costs of the city.

(Code 1993, § 82-147; Ord. No. 2003-02(82-147), § 2, 3-17-2003)

Sec. 46-158. Appeals.

(a) The property owner or applicant for new development may appeal the following decisions to the city council:

(1) The applicability of a capital recovery fee to the development;

(2) The amount of the capital recovery fee due;

(3) The availability or the amount of an offset or credit;

(4) The application of an offset or credit against a capital recovery fee due;

(5) The amount of the refund due, if any.

(b) The burden of proof shall be on the appellant to demonstrate that the amount of the fee or the amount of the offset or credit was not calculated according to the applicable capital recovery fee schedule or the guidelines established for determining offsets and credits.

(c) The appellant must file a notice of appeal with the city clerk within 30 days following the decision. If the notice of appeal is accompanied by a bond or other sufficient surety satisfactory to the city attorney in an amount equal to the original determination of the capital recovery fee due, the development application or tap purchase may be processed while the appeal is pending.

(Code 1993, § 82-148; Ord. No. 2003-02, § 2(82-148), 3-17-2003)

Sec. 46-159. Refunds.

(a) Any capital recovery fee or portion thereof collected pursuant to this article which has not been expended within ten years from the date of payment shall be refunded, upon application, to the record owner of the property at the time the refund is paid, or, if the capital recovery fee was paid by another governmental entity, to such governmental entity, together with interest calculated from the date of collection to the date of refund at the statutory rate as set forth in V.T.C.A., Finance Code ch. 302.

(b) A capital recovery fee collected pursuant to this article shall be considered expended if the total expenditures for capital improvements or facilities expansions authorized in section 46-157 within ten years following the date of payment exceeds the total fees collected for such improvements or expansions during such period.

(c) If a refund is due pursuant to subsections (a) and (b) of this section, the city shall prorate the same by dividing the difference between the amount of expenditures and the amount of the fees collected by the total number of service units assumed within the service area for the period to determine the refund due per service unit. The refund to the record owner or governmental entity shall be calculated by multiplying the refund due per service unit by the number of service units for the development for which the fee was paid, and interest due shall be calculated upon that amount.

(d) Upon completion of all the capital improvements or facilities expansions identified in the capital improvements plan upon which the fee was based, the city shall recalculate the maximum impact fee per service unit using the actual costs for the improvements or expansions. If the maximum impact fee per service unit based on actual cost is less than the impact fee per service unit paid, the city shall refund the difference, if such difference exceeds the impact fee paid by more than ten percent. The refund to the record owner or governmental entity shall be calculated by multiplying such difference by the number of service units for the development for which the fee was paid, and interest due shall be calculated upon that amount.

(e) Upon the request of an owner of the property on which a capital recovery fee has been paid, the city shall refund such fees if:

(1) Existing service is available and service is denied;

(2) Service was not available when the fee was collected and the city has failed to commence construction of facilities to provide service within two years of fee payment; or

(3) Service was not available when the fee was collected and has not subsequently been made available within a reasonable period of time considering the type of capital improvement or facility expansion to be constructed, but in any event later than five years from the date of fee payment.

(f) As set forth in section 46-155, the city shall refund excess fee payments as determined by the difference between fee payments made before building permit issuance and actual fee payments due based on calculations made at the time of water or wastewater tap purchase.

(g) Petition for refunds shall be submitted to the director of public works on a form provided by the city for such purpose. Within one month of the date of receipt of a petition for refund, the director must provide the petitioner, in writing, with a decision on the refund request, including the reasons for the decision. If a refund is due to the petitioner, the director shall notify the city treasurer and request that a refund payment be made to the petitioner. The petitioner may appeal the determination to the city council, as set forth in section 46-158

(Code 1993, § 82-149; Ord. No. 2003-02, § 2(82-149), 3-17-2003)

Sec. 46-160. Updates to plan and revision of fees.

The city shall review the land use assumptions and capital improvements plan for water, wastewater, and drainage facilities in accordance with V.T.C.A., Local Government Code, ch. 395. The city council shall accordingly then make a determination of whether changes to the land use assumptions, capital improvements plan or capital recovery fees are needed and shall, in accordance with the procedures set forth in V.T.C.A., Local Government Code ch. 395, either update the fees or make a determination that no update is necessary.

(Code 1993, § 82-150; Ord. No. 2003-02, § 2(82-150), 3-17-2003)

Sec. 46-161. Functions of advisory committee.

(a) The functions of the advisory committee are those set forth in V.T.C.A., Local Government Code ch. 395, and shall include the following:

(1) Advise and assist the city in adopting land use assumptions;

(2) Review the capital improvements plan regarding water, wastewater, and drainage capital improvements and file written comments thereon;

(3) Monitor and evaluate implementation of the capital improvements program;

(4) Advise the city of the need to update or revise the land use assumptions, capital improvements program and capital recovery fees; and

(5) File a semiannual report evaluating the progress of the city in achieving the capital improvements plans and identifying any problems in implementing the plans or administering the capital recovery fees.

(b) The city shall make available to the advisory committee any professional reports prepared in the development or implementation of the capital improvements plan.

(c) The council city shall adopt procedural rules for the committee to follow in carrying out its duties.

(Code 1993, § 82-151; Ord. No. 2003-02, § 2(82-151), 3-17-2003)

Sec. 46-162. Agreement for capital improvements.

(a) The city council may enter into an agreement with the owner of a new development to construct or finance some of the public improvements identified in the CIP. In the case of such approval, the property owner must enter into an agreement with the city prior to fee collection. The agreement shall be on a form approved by the city, and shall establish the estimated cost of improvement, the schedule for initiation and completion of the improvement, a requirement that the improvement shall be completed to city standards, and any other terms and conditions the city deems necessary. The director shall review the improvement plan, verify costs and time schedules, determine if the improvement is contained in the CIP, and determine the amount of the applicable credit for such improvement to be applied to the otherwise applicable capital recovery fee before submitting the proposed agreement to the city council for approval.

(b) The city and such owner either may agree that the costs incurred or funds advanced will be credited against the capital recovery fees otherwise due from the new development, or they may agree that the city shall reimburse the owner for such costs from capital recovery fees paid from other new developments which will use such capital improvements or facility expansions, which fees shall be collected and reimbursed to the owner at the time the other new development records its plat.

(Code 1993, § 82-152; Ord. No. 2003-02, § 2(82-152), 3-17-2003)

Sec. 46-163. Use of other financing mechanisms.

(a) The city may finance water, wastewater, and drainage capital improvements or facilities expansions designated in the capital improvements plan through the issuance of bonds, through the formation of public improvement districts or other assessment districts, or through any other authorized mechanism, in such manner and subject to such limitations as may be provided by law, in addition to the use of capital recovery fees.

(b) Except as otherwise provided in this article, the assessment and collection of a capital recovery fee shall be additional and supplemental to, and not in substitution of, any other tax, fee, charge or assessment which is lawfully imposed on and due against the property.

(c) The city council may decide that the city shall pay all or part of capital recovery fees due for a new development taking into account available offsets and credits pursuant to duly adopted criteria.

(Code 1993, § 82-153; Ord. No. 2003-02, § 2(82-153), 3-17-2003)

Sec. 46-164. Capital recovery fees as additional and supplemental regulation.

(a) Capital recovery fees established by this article are additional and supplemental to, and not in substitution of, any other requirements imposed by the city on the development of land or the issuance of building permits or the sale of water or wastewater taps or the issuance of certificates of occupancy. Such fees are intended to be consistent with and to further the policies of the city's comprehensive plan, capital improvements plan, subdivision regulations and other city policies, ordinances and resolutions by which the city seeks to ensure the provision of adequate public facilities in conjunction with the development of land.

(b) This article shall not affect, in any manner, the permissible use of property, density of development, design and improvement standards and requirements, or any other aspect of the development of land or provision of public improvements subject to the zoning and subdivision regulations or other regulations of the city, which shall be operative and remain in full force and effect without limitation with respect to all such development.

(Code 1993, § 82-154; Ord. No. 2003-02, § 2(82-154), 3-17-2003)

Sec. 46-165. Relief procedures.

(a) Any person who has paid a capital recovery fee, or an owner of land upon which a capital recovery fee has been paid, may petition the city council to determine whether any duty required by this article has not been performed within the time so prescribed. The petition shall be in writing and shall state the nature of the unperformed duty and request that the act be performed within 60 days of the request. If the city council determines that the duty is required pursuant to this article and is late in being performed, it shall cause the duty to commence within 60 days of the date of the request and to continue until completion.

(b) The city council may grant a variance or waiver from any requirement of this article, upon written request by a developer or owner of property subject to this article, following a public hearing, and only upon finding that a strict application of such requirement would, when regarded as a whole, result in confiscation of the property.

(c) The city council may grant a waiver from any requirement of this article on other grounds, as may be set forth in administrative guidelines.

(d) If the city council grants a variance or waiver to the amount of the capital recovery fees due for a new development under this section, it shall cause to be appropriated from other city funds the amount of the reduction in the capital recovery fees to the account in which the fees would have been deposited.

(Code 1993, § 82-155; Ord. No. 2003-02, § 2(82-155), 3-17-2003)

Sec. 46-166. Schedule of maximum capital recovery fees.

(a) The schedule of maximum capital recovery fees shall be as currently established or as hereafter adopted by resolution of the city council from time to time.

(b) This section may be amended by the city council according to the procedure set forth in V.T.C.A., Local Government Code ch. 395.

(Code 1993, § 82-156; Ord. No. 2003-02, § 2(82-156), 3-17-2003; Ord. No. 2009-12, § 2(82-156), 6-1-2009)

Secs. 46-167—46-185. Reserved.

DIVISION 2. WATER CAPITAL RECOVERY FEES

Sec. 46-186. Water service area.

Sec. 46-187. Water capital improvement plan.

Sec. 46-188. Water facilities fees.

Secs. 46-189—46-214. Reserved.

Sec. 46-186. Water service area.

(a) There is hereby established a water service area, which is specifically described and defined in the CIP attached to the ordinance from which this article is derived and made a part of this article.

(b) The boundaries of the water service area may be amended from time to time, and new water service areas may be delineated, pursuant to the procedures in section 46-149

(Code 1993, § 82-166; Ord. No. 2003-02, § 2(82-166), 3-17-2003)

Sec. 46-187. Water capital improvement plan.

(a) The water capital improvement plan for the city, as set forth in the CIP attached to the ordinance from which this article is derived and made a part of this article, is hereby adopted. A copy of such plan shall be maintained on file in the office of the city secretary.

(b) The water capital improvement plan may be amended from time to time, pursuant to the procedures set forth in V.T.C.A., Local Government Code ch. 395.

(Code 1993, § 82-167; Ord. No. 2003-02, § 2(82-167), 3-17-2003)

Sec. 46-188. Water facilities fees.

(a) The maximum capital recovery fees per service unit for water facilities are hereby adopted and incorporated in section 46-166

(b) The capital recovery fees per service unit for water facilities may be amended from time to time, pursuant to the procedures in section 46-152

(Code 1993, § 82-168; Ord. No. 2003-02, § 2(82-168), 3-17-2003)

Secs. 46-189—46-214. Reserved.

DIVISION 3. WASTEWATER CAPITAL RECOVERY FEES

Sec. 46-215. Wastewater service area.

Sec. 46-216. Wastewater capital improvement plan.

Sec. 46-217. Wastewater facilities fees.

Secs. 46-218—46-242. Reserved.

Sec. 46-215. Wastewater service area.

(a) There is hereby established a wastewater service area, which is specifically described and defined in the CIP attached to the ordinance from which this article is derived and made a part of this article.

(b) The boundaries of the wastewater service area may be amended from time to time, and new wastewater service areas may be delineated, pursuant to the procedures in section 46-149

(Code 1993, § 82-181; Ord. No. 2003-02, § 2(82-181), 3-17-2003)

Sec. 46-216. Wastewater capital improvement plan.

(a) The wastewater capital improvement plan for the city, as set forth in the CIP attached to the ordinance from which this article is derived and made a part of this article, is hereby adopted. A copy of such plan shall be maintained on file in the office of the city secretary.

(b) The wastewater capital improvement plan may be amended from time to time, pursuant to the procedures set forth in V.T.C.A., Local Government Code ch. 395.

(Code 1993, § 82-182; Ord. No. 2003-02, § 2(82-182), 3-17-2003)

Sec. 46-217. Wastewater facilities fees.

(a) The maximum capital recovery fees per service unit for wastewater facilities are hereby adopted and incorporated in section 46-166

(b) The capital recovery fees per service unit for wastewater facilities may be amended from time to time, pursuant to the procedures in section 46-152

(Code 1993, § 82-183; Ord. No. 2003-02, § 2(82-183), 3-17-2003)

Secs. 46-218—46-242. Reserved.

DIVISION 4. DRAINAGE CAPITAL RECOVERY FEES

Sec. 46-243. Drainage service area.

Sec. 46-244. Drainage capital improvement plan.

Sec. 46-245. Drainage facilities fees.

Secs. 46-246—46-268. Reserved.

Sec. 46-243. Drainage service area.

(a) There are hereby established four drainage service areas, which are specifically described and defined in the CIP attached to the ordinance from which this article is derived and made a part of this article.

(b) The boundaries of each drainage service area may be amended from time to time, and new drainage service areas may be delineated, pursuant to the procedures in section 46-149

(Code 1993, § 82-190; Ord. No. 2003-02, § 2(82-190), 3-17-2003)

Sec. 46-244. Drainage capital improvement plan.

(a) The drainage capital improvement plan for each service area, as set forth in the CIP attached to the ordinance from which this article is derived and made a part of this article, is hereby adopted. A copy of such plan shall be maintained on file in the office of the city secretary.

(b) The drainage capital improvement plan may be amended from time to time, pursuant to the procedures set forth in V.T.C.A., Local Government Code ch. 395.

(Code 1993, § 82-191; Ord. No. 2003-02, § 2(82-191), 3-17-2003)

Sec. 46-245. Drainage facilities fees.

(a) The maximum capital recovery fees within each service area are per service unit for drainage facilities and are hereby adopted and incorporated in section 46-166

(b) The capital recovery fees per service unit for drainage facilities may be amended from time to time, pursuant to the procedures in section 46-152

(Code 1993, § 82-192; Ord. No. 2003-02, § 2(82-192), 3-17-2003)

Secs. 46-246—46-268. Reserved.

ARTICLE V. GAS LINES

Sec. 46-269. When construction permitted.

Sec. 46-270. When payback is applicable; basis.

Sec. 46-271. Approval by the city.

Sec. 46-272. Preparation of map.

Sec. 46-273. Conformity to railroad commission and city standards.

Sec. 46-274. Violations.

Secs. 46-275—46-296. Reserved.

Sec. 46-269. When construction permitted.

All persons, including subdividers, property owners and developers, who own or control property which is so situated with reference to any gas line in the city as, in the opinion of the city council, or such officer as may be designated for the purpose, to make it practical to connect with any gas line, may at their cost and expense lay and construct gas lines in and along the streets and ways of the city to connect with such gas lines in accordance with the master plan of the city and such conditions as may be prescribed by the ordinances or the city council and by the state railroad commission.

(Code 1978, § 5-81; Code 1993, § 82-1)

Sec. 46-270. When payback is applicable; basis.

The payback provisions of this article shall only apply to extensions of main trunk lines to the property line of the subdivider. Any lines constructed within the subdivision or property of the subdivider, or those which are feeder lines, shall not be taken into consideration when determining the amount of payback under this article. It is hereby declared that all gas lines laid under the provisions of this article shall be in all respects owned, managed, controlled and regulated by the city, and connections made therewith shall be governed and regulated in the same manner as connections with any gas lines, except that the right is hereby reserved to subdividers constructing same to receive, for private service connections, a payback for the subdivider's cost of constructing the gas line. Such payback amount is to be based upon a pro rata share of the initial cost of the construction as it relates to the number of square feet in the tract being serviced by the private service connection. The amount of reimbursement to the subdividers constructing the gas lines shall be established by the city council after a hearing, establishing the cost of the construction and the area to be serviced.

(Code 1978, § 5-82; Code 1993, § 82-207)

Sec. 46-271. Approval by the city.

(a) Before beginning any construction of the improvements authorized in this article, complete plans and specifications for such improvements shall have first been completely approved by the state railroad commission, the director of public works and the city engineer as meeting the state's and city's standards.

(b) The director of public works, or his duly authorized representative, shall from time to time inspect the construction of all utility facilities during the course of construction to see that the same shall comply

with the state's and city's standards governing the same. In this regard, free access shall be accorded the director of public works and his duly authorized representative by the subdivider, his agents and employees. Inspection by the director of public works or a failure of the director of public works to inspect construction shall not in any way impair or diminish the obligation of the subdivider to install improvements in accordance with the plans and specifications therefor as approved by the state railroad commission, the city engineer and director of public works in accordance with the state's and city's standards.

(Code 1978, § 5-83; Code 1993, § 82-208)

Sec. 46-272. Preparation of map.

Upon the construction of the gas line by the subdivider, who has a right of payback for the construction of such gas line, the city shall prepare a map indicating the area within which any use of the gas lines would require a payback to the subdivider who constructed the gas line. This map designating the area in which a payback would result shall be placed on public record at the city hall and all developers applying for permits shall be made aware of the existence of the map and the cost of developing and using the gas lines.

(Code 1978, § 5-84; Code 1993, § 82-209)

Sec. 46-273. Conformity to railroad commission and city standards.

The gas lines constructed under this article shall conform to the specifications of the state railroad commission and to the recommendations of the city engineer and director of public works, in the design, size and layout of the gas distribution system. The gas line shall be acceptable, without penalty, to the state railroad commission and shall be approved by the city engineer and the director of public works. All materials and installations for gas lines shall be in accordance with the railroad commission's standards and the city standards for same and shall be approved by the railroad commission and by the director of public works and by the city engineer.

(Code 1978, § 5-85; Code 1993, § 82-210)

Sec. 46-274. Violations.

Any subdivider who lays or constructs any gas line or makes any connection with any gas line for which a payback would be due under this article without having first complied with the provisions of this article or who shall refuse to permit the city to make connection with any of the proposed gas lines, or interfere therewith, or who shall violate any of the provisions of this article shall be guilty of an offense. Cumulative of any other remedy available to it, the city may proceed by injunction or other appropriate remedy to correct any violation of this article.

(Code 1978, § 5-86; Code 1993, § 82-211)

Secs. 46-275—46-296. Reserved.

ARTICLE VI. WATER AND SEWER LINES

Sec. 46-297. When construction permitted.

Sec. 46-298. When payback is applicable; basis.

Sec. 46-299. Approval by the city.

Sec. 46-300. Preparation of map.

Sec. 46-301. Conformity to city standards.

Sec. 46-302. Violations.

Sec. 46-303. Extension of city-owned utilities; requiring connections to city water, sewer and gas lines for service of new construction.

Secs. 46-304—46-324. Reserved.

Sec. 46-297. When construction permitted.

All persons, including subdividers, property owners and developers, hereinafter referred to as "subdividers," who own or control property which is so situated with reference to any sewer or water line in the city as, in the opinion of the city council or such officer as may be designated for the purpose, to make it practical to connect with any sewer or water line, may, at their cost and expense, lay and construct water and sewer lines in and along the streets and ways of the city to connect with such water and sewer lines in accordance with the master plan of the city and such conditions as may be prescribed by the city ordinances.

(Code 1978, § 5-61; Code 1993, § 82-231)

Sec. 46-298. When payback is applicable; basis.

The payback provisions of this article shall only apply to extensions of main trunk lines to the property line of the subdivider. Any lines constructed within the subdivision or property of the subdivider, or those which are feeder lines, shall not be taken into consideration when determining the amount of payback under this article. It is hereby declared that all sewers and water lines laid under the provisions of this article shall be in all respects owned, managed, controlled and regulated by the city, and connections made therewith shall be governed and regulated in the same manner as connections with any sewers and water lines, except that the right is hereby reserved to subdividers constructing same, to receive, for private service connections, a payback for the subdivider's cost of constructing the water and/or sewer line. Such payback amount is to be based upon a pro rata share of the initial cost of the construction as it relates to the number of square feet in the tract being serviced by the private service connection. The amount of reimbursement to the subdividers constructing the water and/or sewer lines shall be established by the city council after a hearing, establishing the cost of the construction and the area to be serviced.

(Code 1978, § 5-62; Code 1993, § 82-232)

Sec. 46-299. Approval by the city.

(a) Before beginning any construction of the improvements authorized in this article, complete plans and specifications for such improvements shall have first been completely approved by the director of public works and the city engineer as meeting the city's standards.

(b) The director of public works, or his duly authorized representative, shall from time to time inspect the construction of all utility facilities during the course of construction to see that the same shall comply with the city's standards governing the same. In this regard, free access shall be accorded the director of public works and his duly authorized representative by the subdivider, his agents and employees. Inspection by the director of public works or a failure of the director of public works to inspect construction shall not in any way impair or diminish the obligation of the subdivider to install improvements in accordance with the plans and specifications therefor as approved by the city engineer and director of public works in accordance with the city's standards.

(Code 1978, § 5-63; Code 1993, § 82-233)

Sec. 46-300. Preparation of map.

Upon the construction of the water or sewer line by the subdivider, who has a right of payback for the construction of such water or sewer line, the city shall prepare a map indicating the area within which any use of the water or sewer lines would require a payback to the subdivider who constructed the water or sewer line. This map designating the area in which a payback would result shall be placed on public record at the city hall and all developers applying for permits shall be made aware of the existence of the map and the cost of developing and using the water and sewer lines.

(Code 1978, § 5-64; Code 1993, § 82-234)

Sec. 46-301. Conformity to city standards.

The water and/or sewer lines constructed under this article shall conform to the recommendations of the city engineer and director of public works, in the design, size and layout of the water distribution system. The water design shall be acceptable, without penalty, to the state fire insurance commission and shall be approved by the city engineer and the director of public works. All materials and installations for water and sewer lines shall be in accordance with the state department of health standards and the American Water Works Association standards and with the city's standards for same and shall be approved by the city engineer and the director of public works.

(Code 1978, § 5-65; Code 1993, § 82-235)

Sec. 46-302. Violations.

Any subdivider who lays or constructs any sewer and/or water line or makes any connection with any sewer and/or water line for which a payback would be due under this article without having first complied with the provisions of this article or who shall refuse to permit the city to make connection with any of the proposed sewer and/or water lines, or interfere therewith, or who shall violate any of the provisions of this article shall be guilty of an offense. Cumulative of any other remedy available to it, the city may proceed by injunction or other appropriate remedy to correct any violation of this article.

(Code 1978, § 5-66; Code 1993, § 82-236)

Sec. 46-303. Extension of city-owned utilities; requiring connections to city water, sewer and gas lines for service of new construction.

(a) *Utility extensions by the city.* It is the policy of the city to extend any or all municipally-owned utilities to unserved residences or businesses when budgeted and appropriated city funds for such extension are available, in accordance with the criteria below:

(1) Requests for extensions will be addressed in the order in which they are received. The availability of funds for that specific program will be the first requirement considered.

(2) Annual estimated revenue to the city over five years must equal or exceed the estimated cost of installation to be paid by the city, less applicable capital recovery fees. Revenue is estimated by the finance director, based on current average annual billings for the category of use. Construction cost is estimated by the public works director using current unit pricing for materials, equipment use and labor.

(3) Full payments of the required contribution to the city have all been received for the specific program.

(4) The city will extend water utility service if adequate service can be provided in compliance with the state water commission regulations and guidelines and as necessary to supply fire protection services, including the sizing of lines as determined appropriate by the city to meet anticipated future service needs. Sewer service will be extended consistent with available

capacity, including the sizing of lines as determined appropriate by the city to meet anticipated future service needs. Gas service will be extended in a similar manner.

(5) This policy does not impose any obligation on the city to extend city utilities when such extensions are the responsibility of the owner, builder or developer.

(b) *Nondiscriminatory administration of policy.* It is the policy and goal of the city to provide utilities, in accordance with the guidelines of this article, to all citizens on an equal, nondiscriminatory basis. The city is committed to the furtherance of this policy and goal.

(c) *Water, sewer and gas connections required for new construction.* All new construction, residential or commercial, shall be connected to and use the city-owned water, sewer and gas utilities if such utility service lines are located within 100 feet of any property lines of the subject lot, tract or parcel of land at the time of construction. New construction does not include remodeling or add-ons to existing residential or commercial improvements.

(Code 1993, § 82-237; Ord. No. 93-08, §§ 3—6, 7-12-1993)

Secs. 46-304—46-324. Reserved.

ARTICLE VII. WATER CONSERVATION [2]

Sec. 46-325. Declaration of policy, purpose, and intent.

Sec. 46-326. Authorization.

Sec. 46-327. Application.

Sec. 46-328. Definitions.

Sec. 46-329. Criteria for initiation and termination of drought response stages.

Sec. 46-330. Wasting water; vegetative watering.

Sec. 46-331. Notices.

Sec. 46-332. Drought response stages.

Sec. 46-333. Penalties for violation of this article.

Sec. 46-334. Adoption of water conservation and drought contingency plan.

Sec. 46-335. Variances.

Sec. 46-336. Coordination with regional water planning groups.

Sec. 46-337. Public involvement.

Sec. 46-325. Declaration of policy, purpose, and intent.

(a) In order to conserve the available water supply and protect the integrity of water supply facilities, with particular regard for domestic water use, sanitation, and fire protection, and to protect and preserve public health, welfare, and safety and minimize the adverse impacts of water supply shortage or other water supply emergency conditions, the city hereby adopts the following regulations and restrictions on the delivery and consumption of water.

(b) Water uses regulated or prohibited under this drought contingency plan, hereafter referred to as the "plan," are considered to be non-essential and continuation of such uses during times of water shortage or other emergency water supply condition are deemed to constitute a waste of water which subjects the offenders to penalties as defined in section 46-333

(Code 1993, § 82-251; Ord. No. 2002-20, § 1, 9-3-2002)

Sec. 46-326. Authorization.

The director of public works, or his designee is hereby authorized and directed to implement the applicable provisions of this plan upon determination that such implementation is necessary to protect public health, safety, and welfare. The director of public works or his designee, shall have the authority to initiate or terminate drought or other water supply emergency response measures as described in this plan.

(Code 1993, § 82-252; Ord. No. 2002-20, § 1, 9-3-2002)

Sec. 46-327. Application.

The provisions of this plan shall apply to all persons, customers, and property utilizing water provided by the city. The terms "person" and "customer" as used in the plan include individuals, corporations, partnerships, associations, and all other legal entities.

(Code 1993, § 82-253; Ord. No. 2002-20, § 1, 9-3-2002)

Sec. 46-328. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Aesthetic water use means water use for ornamental or decorative purposes such as fountains, reflecting pools, and water gardens.

Commercial and institutional water use means water use that is integral to the operations of commercial and nonprofit establishments and governmental entities such as retail establishments, hotels and motels, restaurants, and office buildings.

Conservation means those practices, techniques, and technologies that reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water or increase the recycling and reuse of water so that a supply is conserved and made available for future or alternative uses.

Customer means any person, company, or organization using water supplied by the city.

Domestic water use means water use for personal needs or for household or sanitary purposes such as drinking, bathing, heating, cooking, sanitation, or for cleaning a residence, business, industry, or institution.

Even-numbered address means street addresses, box numbers, or rural postal route numbers ending in zero, two, four, six, or eight and locations without addresses.

Industrial water use means the use of water in processes designed to convert materials of lower value into forms having greater usability and value.

Landscape irrigation use means water used for the irrigation and maintenance of landscaped areas, whether publicly or privately owned, including residential and commercial lawns, gardens, golf courses, parks, and rights-of-way and medians.

Nonessential water use means water uses that are not essential nor required for the protection of public, health, safety, and welfare, including:

(1) Irrigation of landscape areas, including parks, athletic fields, and golf courses, except otherwise provided under this plan;

(2) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle;

(3) Use of water to wash down any sidewalks, walkways, driveways, parking lots, tennis courts, or other hard-surfaced areas;

(4) Use of water to wash down buildings or structures for purposes other than immediate fire protection;

(5) Flushing gutters or permitting water to run or accumulate in any gutter or street;

(6) Use of water to fill, refill, or add to any indoor or outdoor swimming pools or Jacuzzi-type pools;

(7) Use of water in a fountain or pond for aesthetic or scenic purposes except where necessary to support aquatic life;

(8) Failure to repair a controllable leaks within a reasonable period after having been given notice directing the repair of such leaks; and

(9) Use of water from hydrants for construction purposes or any other purposes other than fire fighting.

Odd-numbered address means street addresses, box numbers, or rural postal route numbers ending in one, three, five, seven, or nine.

Waste of water or *water wasting* means the application of water, provided through the city's potable water system, to soil or to the ground, at a rate of flow that, or in quantity that, exceeds the rate of the water's absorption into the ground. The standing of water on the ground, or the running of water over the ground into a ditch or into gutter or other means of drainage, whether natural or manmade, shall be prima facie evidence that water has been applied at an excessive rate of flow and/or in an excessive quantity; provided, however, the following shall not constitute water wasting:

(1) Inadvertent and incidental splashing or spilling of water during water applications; or

(2) Leakage of water due to plumbing or piping disruptions or breaks, when such disruptions or breaks are promptly repaired or such repairs are promptly undertaken and diligently pursued until completion.

Water production capacity means sum of the design pumping capacities of ground water wells connected to the city's water system.

(Code 1993, § 82-254; Ord. No. 2002-20, § 1, 9-3-2002)

Sec. 46-329. Criteria for initiation and termination of drought response stages.

(a) *Monitoring authority of water supply.* The director of public works or his designee shall monitor water supply and/or demand conditions on a daily basis and shall determine when conditions warrant initiation or termination of each stage of the plan, that is, when the specified "triggers" are reached.

(b) *Triggering criteria.* The triggering criteria described below are based on known system design conditions and performance capabilities.

(1) *Stage 1 trigger—Mild water shortage conditions.*

a. *Requirement for initiation.* Customers shall be requested to voluntarily conserve water and adhere to the prescribed restrictions on certain water uses defined under stage 1 in section 46-332(1), when total daily water demand equals or exceeds 60 percent of the city's water production capacity for three consecutive days.

b. *Requirement for termination.* Stage 1 of the plan may be rescinded when the triggering event condition has ceased to exist for a period of three consecutive days.

(2) *Stage 2 Trigger—Moderate water shortage conditions.*

a. *Requirement for initiation.* Customers shall be required to comply with the requirements and restrictions on certain non-essential water uses defined under stage 2 in section 46-

332(2), when total daily water demand equals or exceeds 70 percent of the city's water production capacity for three consecutive days.

b. *Requirement for termination.* Stage 2 of the plan may be rescinded when the triggering event condition has ceased to exist for a period of three consecutive days. Upon termination of stage 2, stage 1 becomes operative.

(3) *Stage 3 trigger—Severe water shortage conditions.*

a. *Requirement for initiation.* Customers shall be required to comply with the requirements and restrictions on certain non-essential water uses defined under stage 3 in section 46-332(3), when total daily water demand equals or exceeds 80 percent of the city's water production capacity for three consecutive days.

b. *Requirement for termination.* Stage 3 of the plan may be rescinded when the triggering event condition has ceased to exist for a period of three consecutive days. Upon termination of stage 3, stage 2 becomes operative.

(4) *Stage 4 triggers—Critical water shortage conditions.*

a. *Requirement for initiation.* Customers shall be required to comply with the requirements and restrictions on certain non-essential water uses defined under stage 4 in section 46-332(4), when total daily water demand equals or exceeds 90 percent of the city's water production capacity for three consecutive days.

b. *Requirement for termination.* Stage 4 of the plan may be rescinded when the triggering event condition has ceased to exist for a period of three consecutive days. Upon termination of stage 4, stage 3 becomes operative.

(5) *Stage 5 triggers—Emergency water shortage conditions.*

a. *Requirements for initiation.* Customers shall be required to comply with the requirements and restrictions for stage 5 of this plan when the director of public works, or his designee, determines that a water supply emergency exists if any of the following triggers exist:

1. Total daily water demand equals or exceeds 95 percent of the city's water production capacity for three consecutive days;

2. Major water line breaks, or pump or system failures occur, which cause unprecedented loss of capability to provide water service; or

3. Water supply sources are contaminated.

b. *Requirements for termination.* Stage 5 of the plan may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of three consecutive days. Upon termination of stage 5, stage 4 becomes operative.

(Code 1993, § 82-255; Ord. No. 2002-20, § 1, 9-3-2002)

Sec. 46-330. Wasting water; vegetative watering.

It shall be unlawful for any person to cause, allow, or otherwise permit water wasting when applying water to grounds, lawns, plants, trees, shrubs, bushes, or other vegetative matter, or when applying water for any landscaping or agricultural purpose of any kind.

(Code 1993, § 82-256; Ord. No. 2002-20, § 1, 9-3-2002)

Sec. 46-331. Notices.

(a) Upon the determination that a stage 2 or higher water condition exists, the city shall provide for notification to each customer of such condition, as applicable, of all water use restrictions then in effect, and of the penalties for failure to comply with the imposed restrictions. Such notice shall be

given to each customer within the city by publication in the city's official newspaper. Additional means of notification may be employed at the discretion of the city council and/or the city manager.

(b) At such time that the water supply system has been restored to below a stage 2 condition, the city shall provide notice of the termination of the condition either through available media sources or through written notice in the manner provided in subsection (a) of this section.

(Code 1993, § 82-257; Ord. No. 2002-20, § 1, 9-3-2002)

Sec. 46-332. Drought response stages.

The director of public works or designee, shall monitor water supply and/or demand conditions on a daily basis and, in accordance with the triggering criteria set forth in section 46-329, shall determine that a mild, moderate, severe, critical, or emergency condition exists and shall implement the following notification procedures:

(1) *Stage 1 response—Mild water shortage conditions.*

a. *Goal:* Achieve a voluntary ten percent reduction in daily water demand.

b. *Supply management measures.* The city will reduce waterline flushing at the discretion of the director of public works or designate.

c. *Voluntary water use restrictions.*

1. Water customers are requested to voluntarily limit the irrigation of landscaped areas to Sundays and Thursdays for customers with a street address ending in an even number (zero, two, four, six or eight), and Saturdays and Wednesdays for water customers with a street address ending in an odd number (one, three, five, seven or nine), and to irrigate landscapes only between the hours of 7:00 p.m. and 5:00 a.m. on designated watering days. No watering is permitted on Mondays.

2. All operations of the city shall adhere to water use restrictions prescribed for stage 2 of the plan.

3. Water customers are requested to practice water conservation and to minimize or discontinue non-essential water use.

(2) *Stage 2 response—Moderate water shortage conditions.*

a. *Goal.* Achieve a 20 percent reduction in daily water demand.

b. *Supply management measures.* The city will reduce waterline flushing at the discretion of the director of public works or designate and will adhere to the stage 2 response water use restrictions defined in subsection (2)c of this section.

c. *Water use restrictions.* Under threat of penalty for violation, the following water use restrictions shall apply to all persons:

1. Irrigation of landscaped areas with hose-end sprinklers or automatic irrigation systems shall be limited to Thursdays and/or Sundays for customers with a street address ending in an even number (zero, two, four, six or eight), and Wednesdays and/or Saturdays for water customers with a street address ending in an odd number (one, three, five, seven or nine), and irrigation of landscaped areas is further limited to the hours of 7:00 p.m. and 5:00 a.m. on designated watering days. However, irrigation of landscaped areas is permitted at anytime if it is by means of a hand-held hose, a faucet-filled bucket or watering can of five gallons or less, or drip irrigation system.

2. Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle is prohibited except on designated watering days between the hours of 7:00 p.m. and 5:00 a.m. Such washing, when allowed, shall be done with a hand-held bucket or a hand-held hose equipped with a positive shutoff nozzle for quick rinses.

Vehicle washing may be done at any time on the immediate premises of a commercial car wash or commercial service station. Further, such washing may be exempted from these regulations if the health, safety, and welfare of the public is contingent upon frequent vehicle cleansing, such as garbage trucks and vehicles used to transport food and perishables.

3. Use of water to fill, refill, or add to any indoor or outdoor swimming pools, wading pools, or Jacuzzi-type pools is prohibited except on designated watering days between the hours of 7:00 p.m. and 5:00 a.m.

4. Operation of any ornamental fountain or pond for aesthetic or scenic purposes is prohibited except where necessary to support aquatic life or where such fountains or ponds are equipped with a recirculation system.

5. Use of water from hydrants shall be limited to firefighting, related activities, or other activities necessary to maintain public health, safety, and welfare, except that use of water from designated fire hydrants for construction purposes may be allowed under special permit from the city.

6. Use of water for the irrigation of golf course greens, tees, and fairways is prohibited except on designated watering days between the hours of 7:00 p.m. and 5:00 a.m. However, if the golf course utilizes a water source other than that provided by the city, the facility shall not be subject to these regulations.

7. All restaurants are prohibited from serving water to patrons except upon request of the patron.

8. All nonessential water use as defined in section 46-328 is prohibited.

(3) *Stage 3 response—Severe water shortage conditions.*

a. *Goal.* Achieve a 30 percent reduction in daily water demand.

b. *Supply management measures.* The city will eliminate waterline flushing unless required for health and welfare of the public and will adhere to the stage 3 response water use restrictions defined in subsection (3)c of this section.

c. *Water use restrictions.* All requirements of stage 2 shall remain in effect during stage 3 except:

1. The watering of golf course tees is prohibited unless the golf course utilizes a water source other than that provided by the city.

2. The use of water for construction purposes from designated fire hydrants under special permit is to be discontinued.

(4) *Stage 4 response—Critical water shortage conditions.*

a. *Goal.* Achieve a 40 percent reduction in daily water demand.

b. *Supply management measures.* The city will eliminate waterline flushing unless required for health and welfare of the public and will adhere to the stage 4 response water use restrictions defined in subsection (4)c of this section.

c. *Water use restrictions.* All requirements of stages 2 and 3 shall remain in effect during stage 4 except:

1. Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle not occurring on the premises of a commercial car wash and commercial service stations and not in the immediate interest of public health, safety, and welfare is prohibited. Further, such vehicle washing at commercial car washes and commercial service stations shall occur only between the hours of 6:00 a.m. and 10:00 a.m. and between 6:00 p.m. and 10:00 p.m.

2. The filling, refilling, or adding of water to swimming pools, wading pools, and Jacuzzi-type pools is prohibited.

3. Operation of any ornamental fountain or pond for aesthetic or scenic purposes is prohibited except where necessary to support aquatic life or where such fountains or ponds are equipped with a recirculation system.

4. No application for new, additional, expanded, or increased-in-size water service connections, meters, service lines, pipeline extensions, mains, or water service facilities of any kind shall be approved, and time limits for approval of such applications are hereby suspended for such time as this drought response stage or a higher-numbered stage shall be in effect.

(5) *Stage 5 response—Emergency water shortage conditions.*

a. *Goal.* Reduce delivery of water where appropriate to address emergency conditions.

b. *Supply management measures.* The city will eliminate waterline flushing unless required for health and welfare of the public and will adhere to the stage 5 response water use restrictions defined in subsection (5)c of this section.

c. *Water use restrictions.* All requirements of stages 2, 3, and 4 shall remain in effect during stage 5 except that:

1. Irrigation of landscaped areas is absolutely prohibited.

2. Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle is absolutely prohibited.

3. Provision of alternative water supplies. In the event of source contamination or failure, at the discretion of the director of public works, or his designee, alternative water supplies shall be provided to affected citizens. Alternative supplies may include, but are not limited to, bottled water, alternate groundwater wells, or hook up to another public or private water supplier.

(Ord. No. 2002-20, § 1, 9-3-2002; Ord. No. 2013-16, § 2, 10-7-2013)

Sec. 46-333. Penalties for violation of this article.

(a) *Criminal penalties.* Any person who shall violate any provision of this article shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed $2,000.00. Each day of violation shall constitute a separate offense.

(b) *Discontinuance of water service for failure to comply.*

(1) *First notice.* The city shall provide written notice, by hand delivery, to each customer deemed to be in violation hereof, by affixing such written notification to the front door or main entrance of the place of violation.

(2) *Second notice.* In the event a customer commits violations of this article on two separate occasions during any single serious water condition or emergency water condition, service to such customer shall be discontinued following written notice thereof to such customer by registered or certified mail, return receipt requested.

(3) *Reconnection.* No service which has been disconnected pursuant to this section shall be restored until such violation is discontinued, payment has been made to the city of a reconnection fee as currently established or as hereafter adopted by resolution of the city council from time to time and the violator has reimbursed the city for any and all costs incurred by the city, including reasonable attorney's fees, in the enforcement of this article.

(4) *Liabilities cumulative.* The liabilities of a customer under this subsection (b) of this section for reconnection fees and costs shall be in addition to and cumulative of any and all other criminal

penalties for which such customer may otherwise be liable hereunder, and to any other remedy available to the city, whether at law or in equity.

(Code 1993, § 82-259; Ord. No. 2002-20, § 1, 9-3-2002)

Sec. 46-334. Adoption of water conservation and drought contingency plan.

There is hereby adopted for the city a water conservation and drought contingency plan, a true and correct copy of which is filed and maintained in the office of the city secretary.

(Code 1993, § 82-260; Ord. No. 2002-20, § 1, 9-3-2002; Ord. No. 2013-16, § 3, 10-7-2013)

Sec. 46-335. Variances.

(a) The director of public works, or his designee, may, in writing, grant temporary variance for existing water uses otherwise prohibited under this plan if it is determined that failure to grant such variance would cause an emergency condition adversely affecting the health, sanitation, or fire protection for the public or the person requesting such variance and if one or more of the following conditions are met:

(1) Compliance with this plan cannot be technically accomplished during the duration of the water supply shortage or other condition for which the plan is in effect.

(2) Alternative methods can be implemented which will achieve the same level of reduction in water use.

(b) Persons requesting an exemption from the provisions of this article shall file a petition for variance with the city within five days after the plan or a particular drought response stage has been invoked. All petitions for variances shall be reviewed by the director of public works, or his designee, and shall include the following:

(1) Name and address of the petitioners.

(2) Purpose of water use.

(3) Specific provisions of the plan from which the petitioner is requesting relief.

(4) Detailed statement as to how the specific provision of the plan adversely affects the petitioner or what damage or harm will occur to the petitioner or others if petitioner complies with this article.

(5) Description of the relief requested.

(6) Period of time for which the variance is sought.

(7) Alternative water use restrictions or other measures the petitioner is taking or proposes to take to meet the intent of this plan and the compliance date.

(8) Other pertinent information.

(c) Variances granted by the city shall be subject to the following conditions, unless waived or modified by the director of public works or his designee:

(1) Variances granted shall include a timetable for compliance.

(2) Variances granted shall expire when the plan is no longer in effect, unless the petitioner has failed to meet specified requirements.

(d) No variance shall be retroactive or otherwise justify any violation of this plan occurring prior to the issuance of the variance.

(Code 1993, § 82-261; Ord. No. 2002-20, § 1, 9-3-2002)

Sec. 46-336. Coordination with regional water planning groups.

The service area of the city is located within the region H water planning group and the city has provided a copy of this plan to the region H water planning group.

(Code 1993, § 82-262; Ord. No. 2002-20, § 1, 9-3-2002)

Sec. 46-337. Public involvement.

Opportunity for the public to provide input into the preparation of the plan was provided by the city by means of scheduling and providing public notice of a public meeting to accept input on the plan. Public input on the plan was addressed in preparing the plan.

(Code 1993, § 82-263; Ord. No. 2002-20, § 1, 9-3-2002)

FOOTNOTE(S):

--- (**2**) ---

State Law reference— Authority to require water conservation, V.T.C.A., Local Government Code §§ 401.006, 551.006. (Back)

Chapter 47 RESERVED

Chapter 48 VEHICLES FOR HIRE [1]

ARTICLE I. - IN GENERAL

ARTICLE II. - TAXICABS

ARTICLE III. - AUTO WRECKERS AND TOWERS

FOOTNOTE(S):

--- (**1**) ---

State Law reference— Authority to regulate vehicles for hire, V.T.C.A., Local Government Code § 215.073. (Back)

ARTICLE I. IN GENERAL

Secs. 48-1—48-25. Reserved.

Secs. 48-1—48-25. Reserved.

ARTICLE II. TAXICABS

DIVISION 1. - GENERALLY

DIVISION 2. - BUSINESS PERMIT

DIVISION 3. - DRIVER'S LICENSES

DIVISION 4. - INSURANCE

DIVISION 1. GENERALLY

Sec. 48-26. Definitions.

Sec. 48-27. Exclusion from provisions.

Sec. 48-28. Conformance to rate required.

Sec. 48-29. Refusal to pay fare.

Sec. 48-30. Ownership of vehicle.

Sec. 48-31. Cruising prohibited.

Sec. 48-32. Maximum seating.

Sec. 48-33. Transportation of criminals.

Sec. 48-34. Acting on behalf of prostitutes, unlawful establishments.

Sec. 48-35. Consumption of alcoholic beverages.

Sec. 48-36. Sale of alcoholic beverages.

Sec. 48-37. Receipt, discharge of passengers.

Sec. 48-38. Solicitation of business.

Sec. 48-39. Property left in vehicle.

Sec. 48-40. Penalties.

Secs. 48-41—48-55. Reserved.

Sec. 48-26. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Conduct a taxicab business means the use of one or more taxicabs within the corporate limits of the city, by the owner thereof, for the purpose of carrying passengers for hire, either by driving the same himself or having the same driven by some other person, provided that this definition shall not apply to any licensed chauffeur hired as a driver by any person holding a permit to conduct a taxicab business in the city.

Taxicab means any and all vehicles carrying passengers for hire, except motor buses or motor coaches operated by bus lines over designated routes in and through this city.

(Code 1993, § 86-26; Ord. No. 88-06, § 27-1, 11-21-1988)

Sec. 48-27. Exclusion from provisions.

The provisions of this article shall not apply to passenger buses operating under the regulations of the Texas Railroad Commission, and coming into or passing through the city, for the purpose of loading and unloading passengers.

(Code 1993, § 86-27; Ord. No. 88-06, § 27-2, 11-21-1988)

Sec. 48-28. Conformance to rate required.

If any owner, driver, licensee or operator of any taxicab shall refuse to convey a passenger at the rate specified on the rate card displayed in the taxicab or shall demand or receive an amount in excess of the rates displayed on the card, he shall be deemed guilty of a misdemeanor.

(Code 1993, § 86-29; Ord. No. 88-06, § 27-4, 11-21-1988)

Sec. 48-29. Refusal to pay fare.

It shall be unlawful for any person to refuse to pay the legal fare of any taxicab after having hired the same. It shall be unlawful for any person to hire any taxicab with intent to defraud the person from whom it is hired of the value of such service.

(Code 1993, § 86-30; Ord. No. 88-06, § 27-5, 11-21-1988)

State law reference— Theft of service, V.T.C.A., Penal Code § 31.04.

Sec. 48-30. Ownership of vehicle.

It shall be unlawful for any person conducting a taxicab business in the city, to use or operate, or cause to be used or operated, as a taxicab, any vehicle not owned or leased by him.

(Code 1993, § 86-31; Ord. No. 88-06, § 27-6, 11-21-1988)

Sec. 48-31. Cruising prohibited.

It shall be unlawful for any driver of any taxicab to drive or cruise about on the streets of the city seeking passengers who have not theretofore ordered or called for a taxicab.

(Code 1993, § 86-32; Ord. No. 88-06, § 27-7, 11-21-1988)

Sec. 48-32. Maximum seating.

It shall be unlawful to carry more than five passengers in any taxicab, and in no event shall more than two passengers ride in the front seat with the driver.

(Code 1993, § 86-33; Ord. No. 88-06, § 27-8, 11-21-1988)

Sec. 48-33. Transportation of criminals.

It shall be unlawful for any taxicab driver or owner to knowingly transport any criminal, narcotic peddler, prostitute, bootlegger or any other person in the commission of a crime or infraction of the law in any manner.

(Code 1993, § 86-34; Ord. No. 88-06, § 27-9, 11-21-1988)

State law reference— Criminal responsibility for conduct of another, V.T.C.A., Penal Code § 7.02.

Sec. 48-34. Acting on behalf of prostitutes, unlawful establishments.

It shall be unlawful for any taxicab driver or owner to act in any manner as a panderer or pimp for prostitutes or as contact for unlawful establishments of any character, or to knowingly transport any passenger to the abode of a prostitute.

(Code 1993, § 86-35; Ord. No. 88-06, § 27-10, 11-21-1988)

State law reference— Promotion of prostitution, V.T.C.A., Penal Code § 43.03.

Sec. 48-35. Consumption of alcoholic beverages.

(a) It shall be unlawful for any driver or passenger of any taxicab to drink alcoholic beverages of any kind while inside the taxicab.

(b) No driver of any taxicab shall consume any alcoholic beverages within four hours prior to operation of a taxicab.

(Code 1993, § 86-36; Ord. No. 88-06, § 27-11, 11-21-1988)

State law reference— Possession of alcoholic beverage in vehicle, V.T.C.A., Penal Code § 49.031.

Sec. 48-36. Sale of alcoholic beverages.

No driver of a taxicab or owner of a taxicab shall engage in selling intoxicating liquors or soliciting business for any person selling intoxicating liquors.

(Code 1993, § 86-37; Ord. No. 88-06, § 27-12, 11-21-1988)

State law reference— Licenses and permits for sale of alcoholic beverages, V.T.C.A., Alcoholic Beverage Code ch. 11 et seq.

Sec. 48-37. Receipt, discharge of passengers.

No driver of a taxicab shall receive or discharge passengers in the roadway of any street, but shall drive to the right-hand sidewalk, as nearly as possible, or in the absence of a sidewalk, to the extreme right-hand side of the road and there receive or discharge passengers.

(Code 1993, § 86-38; Ord. No. 88-06, § 27-13, 11-21-1988)

State law reference— Opening and closing of vehicle doors, V.T.C.A., Transportation Code § 545.418.

Sec. 48-38. Solicitation of business.

No driver of a taxicab shall solicit patronage in a loud or annoying tone of voice, or in any manner annoy any person or obstruct the movement of any person, or follow any person for the purpose of soliciting patronage.

(Code 1993, § 86-40; Ord. No. 88-06, § 27-78, 11-21-1988)

Sec. 48-39. Property left in vehicle.

All drivers of taxicabs shall promptly deliver to the police department, or to authorized agencies of their companies, all property left in such vehicles by passengers. Whoever violates the provisions of this section shall be guilty of a misdemeanor.

(Code 1993, § 86-41; Ord. No. 88-06, § 27-79, 11-21-1988)

Sec. 48-40. Penalties.

It shall be unlawful for any person to violate any provision of this article.

(Code 1993, § 86-42; Ord. No. 88-06, § 27-80, 11-21-1988)

Secs. 48-41—48-55. Reserved.

DIVISION 2. BUSINESS PERMIT [2]

Sec. 48-56. Required.

Sec. 48-57. Application.

Sec. 48-58. Consideration, action by council.

Sec. 48-59. Contents.

Sec. 48-60. Fee.

Sec. 48-61. Expiration.

Sec. 48-62. Replacement of vehicle.

Sec. 48-63. Transfer prohibited.

Sec. 48-64. Display.

Sec. 48-65. Inspection.

Sec. 48-66. Revocation.

Sec. 48-67. Identification of vehicles.

Secs. 48-68—48-80. Reserved.

Sec. 48-56. Required.

It shall be unlawful for any person to drive or to operate, or to cause to be driven or operated, any taxicab upon or over any street in the city unless there has been obtained for such taxicab, existing in full force and effect, a permit duly issued by the city secretary.

(Code 1993, § 86-56; Ord. No. 88-06, § 27-26, 11-21-1988)

Sec. 48-57. Application.

Before any person shall conduct a taxicab business in the city, he shall file with the city secretary an application to the city council for a permit to conduct such business in this city. The application shall state the name and address of such applicant, whether the applicant is an individual, firm or corporation, and if a firm, the name and address of each member thereof and the number of vehicles proposed to be operated under such permit.

(Code 1993, § 86-57; Ord. No. 88-06, § 27-27, 11-21-1988)

Sec. 48-58. Consideration, action by council.

It shall be the duty of the city secretary, when an application for a permit required by this division is filed with her, at the next regular meeting of the city council following the filing of such application to call the attention of the city council thereto. Upon consideration of such application, the city council may grant or refuse such permit, as in its discretion may seem to be the best interest of the citizenship of the city, and the public in general.

(Code 1993, § 86-58; Ord. No. 88-06, § 27-28, 11-21-1988)

Sec. 48-59. Contents.

All permits for the conduct of a taxicab business in the city shall be issued and signed by the city secretary and sealed with the seal of that office; it shall be dated on the day of its issuance; shall bear a serial number; shall show the name and address of the permittee; shall state that the permittee has been authorized by the city council to conduct a taxicab business in this city until the expiration of December 31 next following the date of issuance; and that the permit is subject to cancellation at any time by the city council.

(Code 1993, § 86-59; Ord. No. 88-06, § 27-29, 11-21-1988)

Sec. 48-60. Fee.

At the time of issuance of a permit under this division, the permittee shall pay to the city secretary a sum as currently established or as hereafter adopted by resolution of the city council from time to time for each taxicab to be operated in the city for a 12-month period ending December 31; provided that, if such permit is granted for less than the full year, the permittee shall pay to the city an amount prorated according to the number of months for which the permit is issued.

(Code 1993, § 86-60; Ord. No. 88-06, § 27-30, 11-21-1988)

Sec. 48-61. Expiration.

Every permit issued under the provisions of this division shall expire at 12:00 midnight, December 31, of each year.

(Code 1993, § 86-61; Ord. No. 88-06, § 27-31, 11-21-1988)

Sec. 48-62. Replacement of vehicle.

Each permittee under this division shall file with the city secretary a statement in writing under oath signed by him, showing the make, model, motor number and state license number of each taxicab. If at any time the holder of a taxicab permit shall desire to use any additional vehicles under the permit, he may do so, and he shall furnish to the city secretary the same information regarding such additional

vehicles as is required in this section regarding those covered by the original permit and shall pay to the city secretary the fee as provided in this division.

(Code 1993, § 86-62; Ord. No. 88-06, § 27-32, 11-21-1988)

Sec. 48-63. Transfer prohibited.

No permit issued under the terms of this division shall be transferred to any other person, nor shall such permit be used for the operation of any vehicle except for the vehicle for which the permit is issued.

(Code 1993, § 86-63; Ord. No. 88-06, § 27-33, 11-21-1988)

Sec. 48-64. Display.

The permit issued for the operation of a taxicab under the terms of this division shall be posted within the taxicab in a conspicuous place. Failure so to post the permit shall be a misdemeanor.

(Code 1993, § 86-64; Ord. No. 88-06, § 27-34, 11-21-1988)

Sec. 48-65. Inspection.

(a) Every holder of a permit to conduct a taxicab business in the city shall provide proof of an annual state inspection of each vehicle used in his business.

(b) Every holder of a permit to conduct a taxicab business in the city shall have each and every taxicab used in his business inspected on the following schedule:

  (1) For the first 50,000 miles only a state inspection will be required.

  (2) After the vehicle has reached 50,000 miles, the vehicle shall be inspected once each quarter by a mechanic who makes his living working on the type of vehicles used as taxicabs and which mechanic is not employed by the holder of the permit or the taxicab company, and such mechanic shall prepare a statement in writing showing that he has inspected the vehicle; the date of such inspection; the license number of such vehicle or vehicles; the name of the permittee, and the serial number of his permit; and that the lights, brakes, and steering apparatus of such vehicle so inspected by him is in good mechanical condition.

(Code 1993, § 86-65; Ord. No. 88-06, § 27-35, 11-21-1988)

Sec. 48-66. Revocation.

Any permit issued under the provisions of this division may be revoked by the city council for the violation by the licensee of any applicable provision of this Code, state law or city ordinance, rule or regulation.

(Code 1993, § 86-66; Ord. No. 88-06, § 27-36, 11-21-1988)

Sec. 48-67. Identification of vehicles.

Every holder of a permit granted under the terms of this division for a taxicab shall have and keep displayed in colors contrasting with the color of the vehicle on each side of each and every vehicle used by him as a motor cab the words, "TAXI PERMIT NO. _____," filling the blank with figures denoting the serial number of his permit and the year the permit is issued. The letters and figures shall be not less than three inches in height.

(Code 1993, § 86-67; Ord. No. 88-06, § 27-37, 11-21-1988)

Secs. 48-68—48-80. Reserved.

FOOTNOTE(S):

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State Law reference— Municipal licensing of vehicles used for carrying passengers for compensation, V.T.C.A., Local Government Code § 215.073. (Back)

DIVISION 3. DRIVER'S LICENSES

Sec. 48-81. State license required.

Sec. 48-82. City license required.

Sec. 48-83. Application.

Sec. 48-84. Fingerprints.

Sec. 48-85. Investigation.

Sec. 48-86. Issuance.

Sec. 48-87. Appeal.

Sec. 48-88. Identification cards.

Sec. 48-89. Transfer prohibited.

Sec. 48-90. Duration.

Sec. 48-91. Fee.

Sec. 48-92. Appearance of driver.

Secs. 48-93—48-105. Reserved.

Sec. 48-81. State license required.

It shall be unlawful for any person to drive a taxicab within the city unless he is duly licensed to operate a taxicab under state law.

(Code 1993, § 86-81; Ord. No. 88-06, § 27-66, 11-21-1988)

State law reference— Driver's, chauffeur's and commercial operator's licenses, V.T.C.A., Transportation Code ch. 521 et seq.

Sec. 48-82. City license required.

It shall be unlawful for any person to drive or operate a taxicab upon or over any street within the city without having first obtained from the city secretary a city taxicab driver's license, unless the fare originates outside the city. Such license is referred to in this division as a "city chauffeur's license."

Notwithstanding the foregoing, a person driving or operating a taxicab upon the streets of the city shall not be deemed to be in violation of this section if such person has been issued and holds a valid and current taxicab driver's license from the City of Houston.

(Code 1993, § 86-82; Ord. No. 88-06, § 27-67, 11-21-1988; Ord. No. 2003-05, § 2, 6-2-2003)

Sec. 48-83. Application.

Any person desiring a city chauffeur's license required by this division shall make a written application therefor to the chief of police, which application shall be made upon a form provided by the city and which shall contain the following information:

(1) The full name, age and specific address of the applicant;

(2) The full name of the person or owner for whom the applicant proposes to be employed;

(3) The length of local residence of the applicant in the city and the state and if a citizen of the United States;

(4) A full personal description of the applicant including his age, height, size, race, color of eyes, complexion and color of hair, body and facial marks, defects, his full fingerprints and his photograph with his hat off;

(5) Whether the applicant has been convicted of a felony and full information concerning same; likewise if applicant has a police record with conviction of misdemeanor and full information concerning same;

(6) Whether the applicant has been convicted of violations of the law in the operation of motor vehicles, and if so, full information concerning same;

(7) The fact that there has been delivered to the chief of police, by the applicant, the certificate of a reputable physician of the city that the applicant is not afflicted with active venereal disease or any disease or disability which would seriously impair his ability to drive and operate a taxicab in a safe manner upon the streets of the city; further, such certificate shall indicate specifically the condition of the hearing and eyesight of the applicant;

(8) The number and date of issuance of the state license issued to the applicant.

(Code 1993, § 86-83; Ord. No. 88-06, § 27-68, 11-21-1988)

Sec. 48-84. Fingerprints.

The fingerprints of the applicant for a license under this article shall be cleared through the Federal Bureau of Investigation and the state bureau of identification.

(Code 1993, § 86-84; Ord. No. 88-06, § 27-69, 11-21-1988)

Sec. 48-85. Investigation.

The chief of police shall make, or cause to be made, such investigations of the character, experience and qualifications of the applicant for a license required by this division as may be deemed consistent and judicious; and shall determine whether or not the applicant is fit and proper to drive and operate a taxicab within the city in a manner consistent with the welfare of the citizenry of the city.

(Code 1993, § 86-85; Ord. No. 88-06, § 27-70, 11-21-1988)

Sec. 48-86. Issuance.

If the chief of police shall find that the applicant is a fit person and properly qualified to receive a city chauffeur's license, he shall so certify to the city secretary and such license shall be granted.

(Code 1993, § 86-86; Ord. No. 88-06, § 27-71, 11-21-1988)

Sec. 48-87. Appeal.

If the chief of police has made his decision and declared same, either the applicant for license under this division, or any duly qualified citizen of the city, shall have the right to appeal to the city council within ten days, which appeal shall be perfected by delivering, in writing, five copies of same to the city council, stating that an appeal from the decision of the chief of police is desired and the facts regarding same. The city council will then, within a period of not more than 15 days, after receiving such notice of appeal, grant a hearing thereon, and after the hearing of the appeal, shall within a period of five days sustain or reverse the decision of the chief of police. If no appeal is taken from the findings made by the chief of police, within the time provided above, the decision of the officer shall be final; otherwise, the decision of the city council shall become final.

(Code 1993, § 86-87; Ord. No. 88-06, § 27-72, 11-21-1988)

Sec. 48-88. Identification cards.

(a) Upon compliance with this division and the issuance of a license, the applicant shall be issued at the time of actual issuance of such license in question, two identification cards, one of which shall be not less than four by eight inches in dimension, which shall contain the full view photograph of the applicant, along with his complete description, residence address and his fingerprints and classification.

(b) One of such cards shall be displayed in a conspicuous place in the taxicab, conspicuous to passengers, and the other shall be carried on the person of the licensee at all times he is engaged in driving a taxicab within the city.

(c) The photographs shall be furnished by and at the expense of the applicant.

(Code 1993, § 86-88; Ord. No. 88-06, § 27-73, 11-21-1988)

Sec. 48-89. Transfer prohibited.

No license issued under this division shall be transferable.

(Code 1993, § 86-89; Ord. No. 88-06, § 27-74, 11-21-1988)

Sec. 48-90. Duration.

Every license issued under this division shall be valid for a period of 12 months from its date of issuance.

(Code 1993, § 86-90; Ord. No. 88-06, § 27-75, 11-21-1988)

Sec. 48-91. Fee.

No fee shall be charged for the issuance of a license under this division.

(Code 1993, § 86-91; Ord. No. 88-06, § 27-76, 11-21-1988)

Sec. 48-92. Appearance of driver.

It shall be the responsibility of every person operating a taxicab business or service in the city to require the drivers in his employ to be neat and clean in appearance while on duty.

(Code 1993, § 86-92; Ord. No. 88-06, § 27-77, 11-21-1988)

Secs. 48-93—48-105. Reserved.

DIVISION 4. INSURANCE

Sec. 48-106. Liability insurance required.

Sec. 48-107. Minimum amount of coverage.

Sec. 48-108. Persons protected.

Sec. 48-109. Provision for continuing liability.

Sec. 48-110. Increasing amount upon return of execution unsatisfied.

Sec. 48-111. Cancellation.

Sec. 48-112. Liability of city, owner; suits.

Secs. 48-113—48-135. Reserved.

Sec. 48-106. Liability insurance required.

Before any permit shall be issued to any owner or operator of a taxicab, or before any renewal of the permit shall be granted, the owner or operator shall be required to file with the city secretary, and thereafter keep in full force and effect, a liability policy in a form approved by the board of insurance commissioners, issued by an insurance company duly authorized to transact liability insurance in the state, covering bodily injuries and injury to or destruction of property resulting from the operation of such vehicle or vehicles.

(Code 1993, § 86-106; Ord. No. 88-06, § 27-48, 11-21-1988)

Sec. 48-107. Minimum amount of coverage.

(a) The maximum amount of recovery in a policy of insurance required by this division shall not be less than the following sums:

  (1) For the injury or death of any one person in any one accident, $20,000.00.

  (2) For total liability in any one accident or personal injuries or death, $40,000.00.

  (3) For injury or destruction of property in any one accident, $15,000.00.

  (4) For PIP coverage in any one accident, $5,000.00.

(b) The minimum amount of insurance liability shall never be less than the amount established by the statutes of the state under the Texas Safety Responsibility Act, Vernon's Ann. Civ. St. art. 6701h, or amendments thereto.

(Code 1993, § 86-107; Ord. No. 88-06, § 27-49, 11-21-1988; Ord. No. 89-02, § 27-49, 2-20-1989)

Sec. 48-108. Persons protected.

The public liability insurance required by this division shall be for the protection of the passengers of the insured taxicab and for the public, but shall not cover personal injuries sustained by the servants, agents or employees of the person providing the insurance coverage.

(Code 1993, § 86-108; Ord. No. 88-06, § 27-50, 11-21-1988)

Sec. 48-109. Provision for continuing liability.

All policies of public liability insurance required by this division shall contain a provision for a continuing liability thereon up to the full amount thereof, notwithstanding any recovery thereon.

(Code 1993, § 86-109; Ord. No. 88-06, § 27-51, 11-21-1988)

Sec. 48-110. Increasing amount upon return of execution unsatisfied.

If the return unsatisfied of any execution issued on any final judgment rendered against any taxicab owner in any suit for damages on account of injury to person or property occasioned by the operation of any taxicab, such owner, within ten days after the return of such execution unsatisfied, provided the judgment is still unpaid, shall increase the amount of his insurance by the amount of such judgment, and failing to do so shall forthwith cease the operation of taxicabs in the city until such additional insurance is deposited or such judgment is paid.

(Code 1993, § 86-110; Ord. No. 88-06, § 27-52, 11-21-1988)

Sec. 48-111. Cancellation.

(a) If any insurer desires to be released from any insurance filed under this division, he may give written notice of such desire to the chief of police at least 30 days before he desires his liability released, and the chief of police shall thereupon give written notice, by personal delivery or by mail, to the insured and demand that he furnish new assurance by the expiration of the 30-day period above provided for, and shall discharge such first insurer from any liability which shall accrue after the time of approval of such new policy, or shall discharge such first insurer after the expiration of such 30-day period.

(b) If any policy is so canceled upon the request of the insurer, and no new insurance policy is filed before the cancellation of the original insurance, the permit to operate taxicabs granted to the insured shall be automatically revoked.

(Code 1993, § 86-111; Ord. No. 88-06, § 27-53, 11-21-1988)

Sec. 48-112. Liability of city, owner; suits.

Neither the city nor any officer thereof shall be held liable for the pecuniary responsibility or solvency of any insurer under the provisions of this article, or in any manner become liable for any sum on account of any such claim or act or omission relating to the insured vehicle, nor shall the liability of the owner of any such vehicle be in any manner limited or changed by reason of the provisions of this article, but the judgment creditors having causes of action secured thereby shall be authorized to sue directly on such policy of insurance without impleading the city. All persons known to any insurer to have been injured or damaged in the same accident and claiming damages thereunder may be made parties without priority of claim on payment in any suit had or instituted on account of such matters.

(Code 1993, § 86-112; Ord. No. 88-06, § 27-54, 11-21-1988)

Secs. 48-113—48-135. Reserved.

ARTICLE III. AUTO WRECKERS AND TOWERS [3]

DIVISION 1. - GENERALLY

DIVISION 2. - EMERGENCY WRECKER SERVICE LICENSE

DIVISION 3. - AUTO WRECKER DRIVER'S PERMIT

DIVISION 4. - OPERATION

FOOTNOTE(S):

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State Law reference— Tow truck regulation by political subdivisions, V.T.C.A., Transportation Code § 643.201; Vehicle Storage Facility Act, V.T.C.A., Occupations Code ch. 2303; automobile wrecking and salvage yards, V.T.C.A., Transportation Code ch. 396; accidents and accident reports, V.T.C.A., Transportation Code ch. 550; authority of governor to have wreckage removed in disasters, V.T.C.A., Government Code § 418.023; interception and use of wire or oral communications, V.T.C.A., Code of Criminal Procedure art. 18.20; unlawful interception, use or disclosure of wire or oral communications, V.T.C.A., Penal Code § 16.02; theft of wrecked motor vehicle, V.T.C.A., Penal Code § 31.03; motor carrier registration, V.T.C.A., Transportation Code ch. 643; salvage vehicle dealers, V.T.C.A., Occupations Code ch. 2302. (Back)

DIVISION 1. GENERALLY

Sec. 48-136. Definitions.

Sec. 48-137. Liability and property damage insurance requirements.

Sec. 48-138. Equipment requirements for transfer and private wreckers.

Sec. 48-139. Storage lot requirements.

Sec. 48-140. Fees for wrecker service.

Sec. 48-141. Penalty.

Sec. 48-142. Unlawful to tow without owner's consent except after notification of police.

Sec. 48-143. Grievance procedure.

Secs. 48-144—48-175. Reserved.

Sec. 48-136. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Chief of police means the chief of police of the city or his appointed representative.

Director means the director of the traffic and transportation department of the city, or his duly authorized representative, who shall be responsible for administering the provisions of this article.

Emergency wrecker means a wrecker which holds an emergency wrecker permit. Such emergency wrecker permit holders are dispatched by the chief of police or his representative, on a rotating basis, to scenes of accidents where vehicles have collided with other vehicles or objects or have been wrecked, in order to tow, remove or haul away the wrecked, disabled or abandoned vehicle from the scene.

License means permission granted by the city to a wrecker company to tow or operate a wrecker within the city.

Nonowner consent means consent to tow a vehicle when such consent is not given by the registered owner of the vehicle. Nonowner consent is sometimes referred to as "private property tow."

Owner means any person engaged in the business of towing motor vehicles for hire or engaged in the business of storing, wrecking or repairing motor vehicles for hire and who owns or is entitled to use any wrecker, and who uses same in the conduct of his business or any part thereof.

Owner consent means permission or a request made to haul or tow a vehicle or motor vehicle to a state-licensed storage lot, to a repair shop, or to any location directed by the owner, which owner consent is given by a registered owner or an authorized person having control of the vehicle or motor vehicle, and which is made prior to the police dispatch for a wrecker in rotation. If conditions permit, the officer at the scene should first inquire if the owner or authorized person has a preference or requests a particular wrecker who or which can remove the vehicle promptly; that is, before the conclusion of police activities at the scene, or as safety dictates.

Permit means written permission granted by the city to a wrecker driver to operate or drive a wrecker within the city.

Private wrecker means a wrecker which is used to tow, carry or transport motor vehicles without the consent of the vehicle owner, but is not used to tow a vehicle from the scene of an accident on any public street where one or more vehicles have collided with another vehicle or other object except as specifically permitted in this article. A private wrecker may also operate as a transfer wrecker.

Tow means a vehicle transported or carried, a reasonable distance, by a wrecker, from point A by raising no less than two wheels off the ground and setting all wheels on the ground at point B.

Transfer wrecker means a wrecker which is used only to tow, carry or transport motor vehicles with the consent of the vehicle owner. A transfer wrecker may not tow any motor vehicle with or without the consent of the vehicle owner from the scene of an accident.

Wrecker means any truck or other motor vehicle which is used for the purpose of towing, carrying, pushing or otherwise transporting any motor vehicle which has collided with another motor vehicle or other object, or which has been wrecked or disabled in any manner, or which is being towed at the request of a police officer, from one place to another for any purpose, including, but not limited to the purpose of wrecking, storing or repairing the vehicle. The term "wrecker" shall not be construed to include a service car or other vehicle not equipped with mechanical devices for transporting wrecked vehicles and not used for such purpose, such as service cars equipped with compressed air containers and tools for performing minor repairs not involving towage or transportation of wrecked or disabled vehicles. This exception shall not authorize evasion of this article, and if any vehicle, although not equipped with devices primarily used for towing wrecked or disabled vehicles, is actually used for such purposes through means of ropes, chains or otherwise, the same shall be considered a wrecker within the terms of this article.

Wrecker driver means any individual who actually operates and drives a wrecker on the streets of the city, either for his own benefit or as an employee of another.

(Code 1993, § 86-136; Ord. No. 89-17, § 12-1, 12-4-1989; Ord. No. 97-03, § 2.0, 2-17-1997)

Sec. 48-137. Liability and property damage insurance requirements.

(a) Before any permit shall be issued under this article to a transfer, private or emergency wrecker owner, or before any renewal of such permit shall be granted, such owner shall procure and keep in full force and effect and shall keep on file with the director a policy of public liability and property damage insurance or a certificate of insurance in the name of the owner or company by a casualty insurance company which is authorized to do business in the state and in standard form approved by the state board of insurance commissioners, and the coverage provisions insuring the public from any loss or damage that may arise to any person or property by reason of the operation of a wrecker of such owner and providing that the amount of recovery on each wrecker shall be in limits of not less than the sums as currently established or as hereafter adopted by resolution of the city council from time to time.

(b) The insurance policies mentioned in subsection (a) of this section shall contain an endorsement which provides for 30 days' notice to the director of any material change or cancellation of the policy.

(Code 1993, § 86-137; Ord. No. 89-17, § 12-11, 12-4-1989; Ord. No. 97-03, § 3.0, 2-17-1997)

Sec. 48-138. Equipment requirements for transfer and private wreckers.

(a) *Generally.* All transfer and private wreckers shall be provided with the following equipment, which shall be adequate for the purpose it is designed, shall be carried and kept in usable condition at all times:

(1) *Size and brakes.* Each wrecker shall be not less than three-quarters ton in size, and a dual wheel with a GVW rating of no less than 6,400 pounds equipped with booster brakes.

(2) *Tow bars.* Tow bars, which are a piece of equipment sometimes known as an A-frame, which is a part of the wrecker and is used to hold a vehicle which has been elevated for towing rigid and to prevent swinging of such raised vehicle as it is being towed. When a vehicle is being towed, the tow bar shall be in place to prevent swinging. A wheel lift is the piece of equipment replacing the A-frame system using hydraulic means which enables a wrecker to lift at least two wheels off the ground for towing purposes.

(3) *Fire extinguisher.* One fire extinguisher that is properly filled and located so that it is readily accessible for use. Such fire extinguisher shall meet the requirements of the National Fire Protection Association, for a 10 BC fire extinguisher and shall be so labeled by a national testing laboratory.

(4) *Information.* No person shall drive or operate any transfer or private wrecker, or allow, permit or cause any person to drive or operate any transfer or private wrecker unless the following information is clearly and legibly painted in colors which contrast with the color of the doors, on the outside of both entrance doors of the vehicle in letters of at least three inches in height and one-half inch in stroke width:

a. The name of the company under which the permit holder is doing business.

b. The telephone number, which shall be obtainable through directory assistance, and the address of the permit holder or his agent where persons can call at any hour the wrecker is in operation to obtain information as to the storage lot to which a vehicle was towed.

(b) *Compliance of wrecker.* Each heavy-duty wrecker must comply with the requirements in subsection (a) of this section as well as the following:

(1) Each heavy-duty wrecker must not be less than five tons in size.

(2) Each heavy-duty wrecker shall be equipped with a power-operated winch, winch line and boom, with a factory rated lifting capacity of not less than 32,000 pounds, single or double line capacity.

(3) Each heavy-duty wrecker shall have one broom of a type designed for pushing with an 18-inch head, and a handle of not less than 36 inches.

(4) Each heavy-duty wrecker shall have a box or bucket to carry any glass and debris cleared from the street when picking up a damaged vehicle.

(5) Each heavy-duty wrecker shall have one flat-edged shovel of at least nine inches, with a handle of not less than 36 inches.

(c) *Equipment and vehicle inspection.* The director or his representative shall make a physical inspection of the equipment and vehicles covered by this article as frequently as he shall deem necessary. If such inspection of the equipment and vehicles results in a recommendation that the permit be suspended, the owner shall be informed of the existing deficiencies in writing, and shall have ten days in which to correct the deficiencies.

(Code 1993, § 86-138; Ord. No. 89-17, § 12-12, 12-4-1989)

Sec. 48-139. Storage lot requirements.

(a) All private wrecker license holders under this article shall maintain or have access to a vehicle depository located in the corporate limits of the city or located within the extraterritorial jurisdiction of the city, as that term is defined in V.T.C.A., Local Government Code ch. 42. The chief of police or the chief's designated representative shall make the determination of the limits of the city's territorial jurisdiction upon written request to do so or in connection with any wrecker permit application. Such vehicle depositories maintained or used by private wrecker license holders shall be state licensed vehicle storage lots pursuant to the Vehicle Storage Facility Act (V.T.C.A., Occupations Code ch. 2303).

(b) Any vehicle hauled or towed without the owner's consent shall be taken to a state-licensed storage facility authorized by this section, or to such other location as directed by the owner or authorized person, with the approval of the police officer at the scene. Additionally, each private wrecker license holder shall have its own private storage lot. The sharing of storage lots is prohibited.

(Code 1993, § 86-139; Ord. No. 89-17, § 12-13, 12-4-1989; Ord. No. 97-03, § 4.0, 2-17-1997)

Sec. 48-140. Fees for wrecker service.

A licensee shall charge the following fees for services rendered to automobiles and trucks without the owner's consent:

(1) A fee not to exceed $80.00 for towing a vehicle from one location within the city to another within the city.

(2) A fee not to exceed $150.00 per hour, with a two-hour minimum charge for towing a vehicle which requires a heavy-duty wrecker from one location within the city to another, or from a location within the city to a location within the extraterritorial jurisdiction of the city. The charge is calculated from the time a heavy-duty wrecker leaves a licensee's place of business to the time the wrecked or disabled vehicle is delivered to a location designated by the owner. Fees for fractions of an hour above the two-hour minimum charge are based upon quarter-hour increments. The hourly rate shall be inclusive of all services performed by the heavy-duty wrecker.

(3) The fee for storing a vehicle at a depository maintained by or for a permittee under this article shall not exceed $15.00 per day. Notice shall be given within the seventh day after taking the motor vehicle into custody, by certified mail, to the last known registered owner of the motor vehicle and all lienholders of record pursuant to the Certificate of Title Act (Vernon's Ann. Civ. St. art. 6687-1 et seq.), that the vehicle has been taken into custody. The notice shall describe the year, make, model and vehicle identification number of the stored vehicle, set forth the location of the facility where the motor vehicle is being held, inform the owner and any

lienholders of their right to reclaim the motor vehicle not later than the 20th day after the date of the notice, on payment of all towing and storage charges resulting from placing the vehicle in custody. The notice shall also state that the failure of the owner or lienholders to exercise their right to reclaim the vehicle within the time provided constitutes a waiver by the owner and lienholders of all right, title and interest in the vehicle and their consent to the sale of the abandoned motor vehicle at a public auction. If the garage or storage lot owner fails to notify by certified mail the last known registered owner of the motor vehicle and all lienholders of record within the prescribed time allotted, the garage or storage lot owner shall be guilty of a class C misdemeanor and subject to punishment as provided in section 1-14. The garage owner then may charge storage fees for not more than ten days.

(4) When the licensee, agent or employee of a storage lot accepts possession of a motor vehicle for a purpose other than repair, the licensee, agent or employee of a storage lot is entitled to a notification fee. The notification fee is compensation for activity including the identification number verification, title research, office cost, certified letters, administration processing, etc. Such fee shall not exceed $25.00 with an itemized list being furnished to the customer upon request. The notification fee shall apply to nonconsent vehicles only. This notification fee shall not commence until the completion of the seventh day of storage.

(5) Shop rates or service charges at the rate of $50.00 per hour, with a one-hour minimum, for the following services:

a. Use of dollies.

b. Winching.

c. Overturned vehicle.

d. Vehicle in ditch.

e. Additional wrecker.

f. Changing tires.

g. Dropping drive shafts.

h. Removal of portions or multiple pieces of vehicles.

(Code 1993, § 86-140; Ord. No. 89-17, § 12-14, 12-4-1989; Ord. No. 97-03, § 5.0, 2-17-1997; Ord. No. 2002-16, § 1, 6-17-2002)

Sec. 48-141. Penalty.

An owner, driver or any person who violates any provision of this article shall be deemed in violation of this Code and guilty of a Class C misdemeanor will be punished by a fine or suspension or removal from the wrecker rotation list.

(1) If a fine is imposed, the rate will be set by the municipal court and shall not exceed the amount provided in section 1-14 for each count.

(2) If a suspension or removal from the wrecker rotation list is imposed, the wrecker appeals board will set the length of time such suspension or removal shall run.

(3) A fine may not be imposed if the board files for a suspension or removal from the wrecker rotation list.

(Code 1993, § 86-141; Ord. No. 89-17, § 12-42, 12-4-1989)

Sec. 48-142. Unlawful to tow without owner's consent except after notification of police.

(a) It shall be unlawful for any wrecker owner or wrecker driver to tow or haul or cause to be towed or hauled any vehicle within the city, except by request of the owner of the vehicle, without having first

notified the police department dispatcher within one hour after such tow. Any such vehicle towed or hauled without the owner's permission or knowledge shall be stored in a state-licensed vehicle depository within the corporate limits or extraterritorial jurisdiction of the city, as referenced in section 48-139, until released to the vehicle owner or agent.

(b) In any prosecution charging violation of this section, proof that the owner of the vehicle did not consent to the removal of the vehicle, together with proof that the defendant named in the complaint had possession of the vehicle on the date charged, shall constitute in evidence a prima facie presumption that the possessor of the vehicle was the person or company who towed, hauled, or caused to be towed or hauled the vehicle found in his possession on the date of possession. The defendant shall have the right to introduce evidence to show that the vehicle was not towed or hauled as alleged in the complaint.

(Code 1993, § 86-142; Ord. No. 89-17, § 12-2(c), 12-4-1989)

Sec. 48-143. Grievance procedure.

(a) There is hereby created a wrecker appeals board consisting of three members.

(b) There shall be three positions on the board to be filled as follows:

(1) Position one shall be filled by the director of the city traffic and transportation department or his designated representative.

(2) Position two shall be filled by the chief of police or his designated representative.

(3) Position three shall be filled by a member of the city community (residency not required) who is selected jointly to serve by the director of the city traffic and transportation department, the chief of police, and the city manager or assistant city manager.

(c) The board shall provide a grievance procedure as hereafter provided from an order of the director or chief of police as follows:

(1) Granting or denying the initial or renewal application for a permit or license under this article;

(2) Suspending, revoking or canceling a permit or license under this article; or

(3) Otherwise prohibiting the continued operation of the wrecker business under this article.

(d) No member of the board shall have any interest, distinguishable from the interest of the public at large, in the wrecker permit or business under consideration or have any other apparent conflict, and in the event this limitation results in disqualification, as determined by the city manager or the assistant city manager, then the city manager or the assistant city manager shall select a replacement. Members of the wrecker appeals board shall serve at the pleasure of the city, as provided herein, and they shall have no expectation of continued service in the position.

(e) The procedure for proceedings before the board shall be as follows:

(1) A person desiring a grievance before the board shall file a written notice requesting same with the chief of police within ten days after the action or order complained of.

(2) The director or chief of police shall thereafter set a grievance hearing by the board within 20 days of the receipt of the request and shall notify in writing the person requesting same of the time and place.

(3) The board shall:

a. Conduct the grievance hearing;

b. Hear the grievance and any matter relevant to the grievance;

c. Give the person requesting the grievance and all other interested parties or persons an opportunity to be heard; and

d. Consider applicable laws, ordinances or requirements. The purpose of the grievance procedure is to allow the person requesting it an opportunity to present concerns to the board. It not intended to mean, nor shall it have the effect of requiring, that any written notice, any charges, any witness, or any response, or written reasons for board decisions be presented during or after the grievance process by the city or the board.

(4) The board shall make a decision by majority vote based upon the grievance presentation. The decision shall be reduced to writing and mailed to the person requesting the hearing within a reasonable time. Such decision is advisory only.

(Code 1993, § 86-143; Ord. No. 89-17, § 12-41(a), 12-4-1989; Ord. No. 97-03, § 6.0, 2-17-1997)

Secs. 48-144—48-175. Reserved.

DIVISION 2. EMERGENCY WRECKER SERVICE LICENSE

Sec. 48-176. Required; transferable; expiration date; trade name registration; location of business.

Sec. 48-177. Application; renewal.

Sec. 48-178. Fee.

Sec. 48-179. Prerequisites to issuance.

Sec. 48-180. Refusal to issue or renew.

Sec. 48-181. Revocation or suspension.

Secs. 48-182—48-190. Reserved.

Sec. 48-176. Required; transferable; expiration date; trade name registration; location of business.

(a) No person may engage in emergency wrecker service in the city without first obtaining an emergency wrecker license from the director. A license is assignable or transferable upon approval by the director. An emergency wrecker license expires on September 30 of each year. The license issued to an emergency wrecker company authorizes the licensee and his bona fide employees to engage in emergency wrecker service.

(b) No person shall drive or operate any emergency wrecker, or allow, permit or cause any person to drive or operate any wrecker unless the following information is clearly and legibly painted in colors, which contrast with the color of the doors, on the outside of both entrance doors of the vehicle in letters and numbers of at least three inches in height and one-half inch in stroke width:

(1) The name of the company under which the permit holder is doing business.

(2) The telephone number, which shall be obtainable through directory assistance, and address of the permit holder or his agent where persons can call at any hour the wrecker is in operation to obtain information as to the storage lot to which a vehicle was towed.

(Code 1993, § 86-176; Ord. No. 89-17, § 12-15, 12-4-1989)

Sec. 48-177. Application; renewal.

(a) A person desiring to engage in emergency wrecker service in the city shall file with the director a written application upon a form provided for that purpose, which must be signed by the applicant or his authorized agent. The following information is required in the application:

(1) True name, trade name, address and telephone number of the emergency wrecker company. The company may be a sole proprietorship, partnership or corporation.

(2) Number and types of wreckers to be operated.

(3) Name, address and telephone number of the owner of the emergency wrecker company, and if a corporation, the names, addresses, telephone numbers of owners holding more than ten percent of the shares of the corporation.

(4) An agreement that the applicant will participate in the wrecker rotation list.

(5) Proof of ownership, which shall mean the title with the owner's name, by the applicant of the wrecker to be used. Such ownership shall be verified at the time of application and quarterly thereafter by the police department and upon any renewal of insurance.

(b) A fee as currently established or as hereafter adopted by resolution of the city council from time to time for processing an initial application must be submitted with the application. There shall be a fee as currently established or as hereafter adopted by resolution of the city council from time to time for each additional application. In addition to the requirements in subsection (a) of this section, an initial applicant shall:

(1) Specify in the application for an emergency wrecker company license whether the applicant intends to operate a light-duty or heavy-duty wrecker service, or both.

(2) Show proof of insurability in compliance with section 48-137

(3) Provide at least one emergency wrecker which meets the requirements of this division unless the applicant intends to operate heavy-duty wrecker service only, in which case the applicant is exempted from the requirements of this section.

(c) The director and/or chief shall inquire about:

(1) The experience in wrecker operation and safety record of the applicant and the applicant's drivers.

(2) The criminal convictions of the applicant or the applicant's drivers involving moral turpitude including burglary, theft, robbery, forgery, and perjury or relevant convictions that would reflect on the ability to operate a wrecker.

(3) Only one license may be issued to each emergency wrecker company, and a person, partnership, or corporation may not own a controlling interest in another emergency wrecker company.

(d) An annual license renewal which is applied for at least 20 days prior to the expiration of the license will be granted upon compliance with the provisions of this division and without proof of public necessity. An applicant who has failed to renew or whose license has been revoked under this division is considered an initial applicant.

(e) The director may, at any time, require additional information of an applicant or licensee to clarify items on the application.

(f) Supplemental permit for additional wreckers.

(1) Where an owner has obtained a wrecker permit and thereafter desires to increase the number of wreckers to be operated, he shall file a supplemental application with the director, setting forth his permit number and the fact that he desires to operate additional wreckers, giving the make, model, vehicle identification number and state license number of each additional wrecker. He shall also pay a permit fee as currently established or as hereafter adopted by resolution of the city council from time to time for each additional wrecker and file a new insurance policy meeting the requirements of this article, covering the new wrecker.

(2) The director shall examine such supplemental wrecker application, fee and policy, and if the same are in order, the director shall issue a supplemental permit covering the new wrecker.

(g) Supplemental permit for substitute wrecker. Whenever an owner wishes to discontinue the use of a wrecker during the period covered by his permit and replace it with another, he shall file an affidavit stating that he has discontinued using the wrecker covered by his permit, and desires to use another wrecker in its place. He shall attach a certificate from his insurer that such insurer has been notified thereof and agrees thereto. The director shall then issue the owner a supplemental permit at a cost as currently established or as hereafter adopted by resolution of the city council from time to time, which will cover the new wrecker and cause the description of the old wrecker to be eliminated from the original permit. In the affidavit, certificate from the insurer, and supplemental permit, the old and new wrecker shall be described by make, model, vehicle identification number and state license number.

(Code 1993, §§ 86-161, 86-162, 86-177; Ord. No. 89-17, §§ 12-8, 12-9, 12-16, 12-4-1989; Ord. No. 97-03, § 8.0, 2-17-1997)

Sec. 48-178. Fee.

(a) The annual fee for an emergency wrecker license for each emergency wrecker vehicle is as currently established or as hereafter adopted by resolution of the city council from time to time. The fee will be prorated on the basis of whole months. The fee for issuance of a duplicate license if a license is lost, stolen, destroyed or mutilated is as currently established or as hereafter adopted by resolution of the city council from time to time.

(b) Fees are payable to the director upon issuance of the license. No refund of fees will be made.

(c) An emergency wrecker licensee may operate more than one emergency wrecker vehicle; however, he is entitled to only one listing on the wrecker rotation list.

(Code 1993, § 86-178; Ord. No. 89-17, § 12-17, 12-4-1989)

Sec. 48-179. Prerequisites to issuance.

Before issuance of an emergency wrecker service license, the following requirements must be met:

(1) An applicant shall submit each emergency wrecker which will be used in the service for inspection in a manner determined by the director, and each wrecker must comply with the following minimum requirements:

a. Each wrecker shall be not less than one ton (GVW 10,000) in size, have dual wheels, and be equipped with booster brakes.

b. Each wrecker shall be equipped with a power-operated winch, winch line and boom, with a factory rated lifting capacity of not less than 6,000 pounds, single-line capacity.

c. Each wrecker shall carry, as standard equipment, the following items, and all of the items listed in section 48-138(a):

1. Safety chains.

2. Three flares, each of which shall be capable of being seen and distinguished at a distance of not less than 600 feet under normal atmospheric conditions at nighttime.

3. No less than five gallons of dry sand or other absorbent which is at least as effective as sand in absorbing liquid.

4. One wrecking bar of not less than 36 inches in length with a wedge head.

5. First aid kit.

d. Each wrecker and all of its equipment shall be in safe and good working condition.

e. Each wrecker shall be equipped with two-way radio equipment which is capable of providing two-way communication with the licensee's base station at all times.

(2) Each emergency heavy-duty wrecker must comply with the requirements in subsection (1) of this section unless this subsection specifies a different requirement. In addition:

a. Each heavy-duty wrecker must not be less than five tons in size.

b. Each heavy-duty wrecker shall be equipped with a power-operated winch, winch line and boom, with a factory-rated lifting capacity of not less than 32,000 pounds, single or double-line capacity.

c. Towing dollies are not required.

d. Two-way communications are required.

(3) Each licensee shall maintain 24-hour wrecker service and communications.

(4) No vehicles may be towed unless and until the wrecker driver has received a completed police officer wrecker inventory sheet (POWIS). Such POWIS shall be completed in triplicate, at the scene, by the police officer and signed by the officer in charge and the wrecker driver. The original of such POWIS shall be retained by the police department. The remaining two copies shall be left with the wrecker driver. The wrecker driver, prior to delivering the vehicle to the owner or representative, shall have the owner/representative sign the remaining two copies and the wrecker driver shall then give one copy to the owner/representative and retain one copy for the wrecker company records.

(5) If issuance of an emergency wrecker company license is approved, the applicant or licensee shall comply with insurance requirements set forth in section 48-137

(Code 1993, § 86-179; Ord. No. 89-17, § 12-18, 12-4-1989)

Sec. 48-180. Refusal to issue or renew.

The director may refuse to issue or renew an emergency wrecker license upon notice and hearing, for one or more of the following reasons:

(1) The making of any false statement as to material matters in an application for a license, or license renewal or in a hearing concerning the license.

(2) Revocation of a license, pursuant to this division, of the applicant or any proprietor, partner or corporate officer of the applicant within 18 months preceding the application.

(3) Use by the licensee of a trade name for his emergency wrecker company other than the one registered with the director.

(4) Suspension of the licensee's emergency wrecker company license on three occasions within 12 months for more than two days on each occasion.

(5) Failure to meet the qualifications, service standards, or the rules and regulations established by this article.

(6) A licensee or the owner or holder of more than ten percent of licensee's stock, if the licensee is a corporation, has been convicted of a crime involving moral turpitude including burglary, robbery, perjury, forgery, theft, theft of an automobile or receiving and concealing stolen property, unless five years has lapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date.

(7) If the holder of the license is a corporation, if such corporation fails to furnish a list of the owners or holders of more than ten percent of the issued and outstanding stock in such corporation at the time of application, transfer or renewal.

(Code 1993, § 86-180; Ord. No. 89-17, § 12-19, 12-4-1989; Ord. No. 97-03, § 9.0, 2-17-1997)

Sec. 48-181. Revocation or suspension.

(a) *Filing of complaint; hearing conducted.* Upon a complaint being filed by any person with the director or chief of police of a violation by the holder of an emergency wrecker license of any of the terms or provisions of this article or the violation of any applicable law of the state, federal government or ordinances of the city, the director or chief of police shall, after ten days' written notice to the wrecker license holder on the grounds of such complaint or his own motion, conduct a hearing or hear evidence with reference to such complaint or motion. Should such hearing reveal a violation of any of the terms of this article, or the laws of the state or the federal government, or ordinances of the city, the director or chief of police may suspend or revoke the emergency wrecker license as follows:

(1) *Reasons for revocation.*

a. The making of any false statement as to a material matter in an application for a license renewal, or in a hearing concerning a license.

b. Use by the licensee of a trade name for his emergency wrecker other than the one registered with the director.

c. Suspension of the licensee's emergency wrecker license on three occasions within 12 months for more than three days on each occasion.

d. A licensee is convicted for a crime involving theft, theft of an automobile or receiving and concealing stolen property unless five years have elapsed since the date of conviction, or the date of release from confinement imposed for conviction, whichever is the later date.

(2) *Reasons for suspension.*

a. Failure of the licensee to maintain his wrecker or equipment in a good and safe working condition.

b. Violation by the licensee or any employee of the licensee of a provision of this article or of the rules and regulations established for emergency wrecker service by the chief of police and/or the director.

c. Failure of the licensee's wrecker to arrive at the location of a wrecked or disabled vehicle or parking violation within the prescribed time after having been notified to do so by the chief of police or his agent.

d. Conviction of an emergency wrecker driver of two or more provisions of the motor vehicle traffic laws of the state or two or more Class C misdemeanor violations within a 12-month period while in the scope of his employment in the emergency wrecker service.

e. Any wrecker driver or wrecker driver owner, driving or allowing to be driven any licensed wrecker without a wrecker driving permit.

(b) *Findings made to owner; right to appeal.* After the director or chief of police has conducted the hearing and investigation upon the complaint or motion for the suspension or revocation of the license of any owner of an emergency wrecker permit, he shall make his findings and declare the same in writing to the owner or operator of such wrecker permit within 15 days after such hearing. The owner of such wrecker license shall have the right to appeal a suspension or revocation which is imposed by the director or chief of police in the manner provided in section 48-143

(c) *Fee refund.* Upon the suspension or revocation of an emergency wrecker permit issued under this division, no portion of the fee paid therefor shall be refunded.

(Code 1993, § 86-181; Ord. No. 89-17, § 12-20, 12-4-1989)

Secs. 48-182—48-190. Reserved.

DIVISION 3. AUTO WRECKER DRIVER'S PERMIT

Sec. 48-191. Required.

Sec. 48-192. Application.

Sec. 48-193. Fee.

Sec. 48-194. Application investigation.

Sec. 48-195. Application denial; notice.

Sec. 48-196. Application hearing.

Sec. 48-197. Refusal to issue or revocation.

Sec. 48-198. Expiration; renewal; replacement.

Secs. 48-199—48-210. Reserved.

Sec. 48-191. Required.

(a) No person shall drive or operate any wrecker for the purpose of making tows on a public street unless he has a current wrecker driver permit issued by the city.

(b) No person shall allow, permit, or cause to be operated any wrecker on a public street for the purpose of making tows unless the person operating or driving the wrecker has a current wrecker driver permit issued by the city.

(c) A violation of subsection (a) or (b) of this section shall be a Class C misdemeanor and is punishable as provided in section 1-14 or by suspension.

(Code 1993, § 86-191; Ord. No. 89-17, § 12-21, 12-4-1989)

Sec. 48-192. Application.

(a) Each person desiring a wrecker driver permit shall submit an application to the director on a form furnished by the city. On the application the applicant shall set forth:

(1) The name and address of the applicant.

(2) The applicant's date of birth, place of birth, sex and each address where he has resided in the two years immediately preceding his application.

(3) The name and address of each employer of the applicant and any businesses that the applicant has been engaged in during the two years immediately preceding the filing of the application.

(4) Evidence that the applicant has operated a motor vehicle for at least six months immediately prior to the filing of the application.

(5) Whether the applicant has been convicted of any criminal offense in this state or any other state or county preceding his application or has spent any time in jail or prison preceding his application due to a conviction for a criminal offense. If he has been convicted of any such offense or been in jail or prison, he shall set out the offense convicted of, the date of the conviction and the police, court and case numbers of the case. All applicants shall, in their application, authorize the police department to investigate as to whether the applicant has committed any criminal offense.

(6) The number of driver's licenses issued to the applicant for vehicles greater than one ton issued by the state and a list of driver's licenses the applicant has held in the two years immediately preceding the submission of the application showing the state which issued each license and the type of license held. The applicant shall also show the director evidence that he has a current license valid under state law for vehicles greater than one ton, issued by the state, and shall complete a form allowing the director and the police department to obtain information as to the applicant's driving record from the state and from any state which had issued the applicant a driver's license which was valid at any time within the two years immediately preceding the submission of the application.

(7) Such other information as the director finds relevant.

Each application submitted shall include two current photographs of the applicant.

(b) After the application has been completed, the applicant shall sign the application and shall execute a sworn affidavit that all matters stated in the application are true and correct.

(c) The applicant shall also provide the director with evidence that he is at least 18 years of age and submit himself to be fingerprinted at a time and place designated by the director.

(Code 1993, § 86-192; Ord. No. 89-17, § 12-22, 12-4-1989)

Sec. 48-193. Fee.

Every person desiring a wrecker driver permit shall pay a nonrefundable license fee as currently established or as hereafter adopted by resolution of the city council from time to time at the time he submits his application to the director.

(Code 1993, § 86-193; Ord. No. 89-17, § 12-23, 12-4-1989; Ord. No. 2002-16, § 2, 6-17-2002)

Sec. 48-194. Application investigation.

The director shall issue a wrecker driver permit after submission of an application in accordance with section 48-192, payment of the application fee and completion of the investigation of the criminal and driving records of the applicant, unless he finds that the permit should be denied under section 48-195 or gives notice of a hearing pursuant to section 48-196.

(Code 1993, § 86-194; Ord. No. 89-17, § 12-24, 12-4-1989)

Sec. 48-195. Application denial; notice.

(a) An application for a wrecker driver permit shall be denied if any information set out in the application was incomplete or false.

(b) If the director or chief of police denies the application for a wrecker driver permit, he shall give written notice to the applicant by certified mail, return receipt requested, at the applicant's address as set out in the application. In such notice the director shall set out the reason the application was denied.

(Code 1993, § 86-195; Ord. No. 89-17, § 12-25, 12-4-1989)

Sec. 48-196. Application hearing.

The director shall give the applicant notice that a hearing will be held in regard to his application for a wrecker driver permit if:

(1) The police department has informed the director that the applicant has been convicted of or spent any time in jail or prison for any of the following offenses prior to the issuance of the permit:

a. Any offense involving moral turpitude, including:

1. Fraud or theft of any kind;

2. Forgery;

3. Burglary;

4. Robbery; or

5. Any felony conviction.

b. An offense relevant and reflecting on the ability of the applicant to operate as a wrecker driver.

The director shall not, however, deny a permit on the basis of time in jail or prison where there was no conviction or for any conviction which was set aside as invalid.

(2) The applicant has been convicted of three or more moving violations of the traffic laws of this state or of any other state in the one-year period immediately preceding the date of issuance of the permit or has been convicted of seven or more moving violations in the three-year period immediately preceding the date of issuance of the permit.

(3) A wrecker driver permit issued to the applicant by the city had been revoked at any time within five years immediately preceding the submission of the application, had not been renewed, and grounds existed for the revocation of the permit at the time it expired.

(Code 1993, § 86-196; Ord. No. 89-17, § 12-26, 12-4-1989)

Sec. 48-197. Refusal to issue or revocation.

The director may refuse to renew a wrecker driver permit and a wrecker driver permit may be revoked at any time if:

(1) The licensee has committed or been convicted of any of the offenses set forth in section 48-196(1).

(2) The licensee has been convicted of three or more moving violations of the traffic laws of this state or of any other state within one year when any of the convictions occurred after the permit was issued.

(3) The licensee has been convicted of driving while intoxicated or driving while under the influence of drugs after the permit was issued.

(4) The licensee has committed or been convicted of any violation of this article or ordinances of the city regulating wreckers.

(5) The licensee has violated any of the rules and regulations issued by the director or chief of police pursuant to this article.

(Code 1993, § 86-197; Ord. No. 89-17, § 12-29, 12-4-1989)

Sec. 48-198. Expiration; renewal; replacement.

(a) All wrecker driver permits shall expire one year from the date the permit was issued. To renew such a permit the licensee shall file an application on a form designated by the director setting out such information as the director finds is reasonably necessary to determine if the applicant's license

should be renewed, and shall pay a renewal fee as currently established or as hereafter adopted by resolution of the city council from time to time.

(b) If a wrecker driver's permit is lost or destroyed, he may obtain a replacement permit under the following conditions:

(1) He files an affidavit, sworn to before a notary, stating that his permit has been lost or stolen and setting out the details of how his permit was lost or stolen, setting out the details of where and when he last saw the permit and when he discovered it as lost;

(2) Submitting two photographs to the police department; and

(3) Paying a fee for the replacement permit as currently established or as hereafter adopted by resolution of the city council from time to time. A replacement wrecker driver's permit shall expire on the date of expiration for the permit which was lost or stolen.

(Code 1993, § 86-198; Ord. No. 89-17, § 12-27, 12-4-1989)

Secs. 48-199—48-210. Reserved.

DIVISION 4. OPERATION

Sec. 48-211. Powers and duties of the director and chief of police with respect to emergency wrecker service.

Sec. 48-212. Wrecker rotation lists to be established; contents; qualifications; use.

Sec. 48-213. Police officer not to influence selection of wrecker service.

Sec. 48-214. Soliciting business at the scene of an accident.

Sec. 48-215. Duties of emergency license holders in providing safe and prompt wrecker service.

Sec. 48-216. Emergency wrecker service owner's records.

Sec. 48-217. Parking of wrecker at scene of accident.

Sec. 48-218. Removal of vehicles from scene of accident.

Sec. 48-219. Supplemental permit for additional emergency wrecker.

Sec. 48-220. Supplemental permit for substitute emergency wrecker.

Sec. 48-221. Storage lot requirements for emergency wreckers.

Sec. 48-211. Powers and duties of the director and chief of police with respect to emergency wrecker service.

In addition to the powers and duties elsewhere prescribed in this article, the director and chief of police are authorized to:

(1) Administer and enforce all provisions of this article;

(2) Keep records of all licenses and permits issued, suspended or revoked;

(3) Keep records of all authorized emergency vehicles;

(4) Adopt rules, regulations and penalties after reasonable notice to the permittees and licensees, not inconsistent with the provisions of this article, with respect to the form and content of applications for licenses and permits the receipt thereof, the investigation of applicants, and

other matters incidental or appropriate to his power and duties as may be necessary for the proper administration and enforcement of the provisions of this article;

(5) Conduct, when appropriate, periodic investigations of emergency wrecker companies throughout the city; and

(6) Require periodic reports as necessary to evaluate each emergency wrecker company's operations.

(Code 1993, § 86-211; Ord. No. 89-17, § 12-29, 12-4-1989)

Sec. 48-212. Wrecker rotation lists to be established; contents; qualifications; use.

(a) The director shall establish and maintain a list of emergency wrecker license holders which shall be known as the wrecker rotation list. This list shall be certified to the chief of police by the director and kept current at all times.

(b) The wrecker rotation list shall contain the names, in alphabetical order, of all qualified license holders requesting to be on such list.

(c) A license holder is qualified to be on such list if:

(1) He meets the requirements of section 48-177

(2) He maintains 24-hour wrecker service and has no more than two telephone numbers, which numbers are answered 24 hours a day, seven days a week. The use of a telephone answering service shall be permitted, provided that if such service is used, the failure of a license holder to communicate with the police communications center or its authorized agent within five minutes following a call requesting a dispatch of a certified wrecker, confirming that the license holder shall immediately dispatch a certified wrecker to the desired location, will result in a forfeiture by that license holder of that call; and

(3) His wreckers are equipped with communications equipment compatible with the radio communications equipment used to dispatch wreckers on the wrecker rotation list.

(d) When the police officer investigating a collision determines that any vehicle involved in a collision is unable to safely proceed under its own power or, when the police officer determines that the driver of any vehicle involved in a collision is physically unable to safely move the vehicle to a location where it will not create a traffic hazard, such officer shall request the driver to designate the emergency license holder which he desires to remove the vehicle.

(1) When the designation has been properly made, the police officer shall communicate the name of the designated license holder to the police communications center or its authorized agent.

(2) The police communications center or its authorized agent shall cause the designated license holder to be called and directed to send to the scene of the collision a permitted wrecker.

(e) If the owner of a vehicle involved in a collision is physically unable to designate the permit holder he desires to remove the vehicle, the police officer shall deem this vehicle a nonowner consent tow and the police officer shall communicate that fact immediately to the police communications center or its authorized agent. The police communications center or its authorized agent shall then call the license holder next in line on the wrecker rotation list and request the license holder to tow the vehicle from the scene of the collision to a storage lot as specified in section 48-139. After the last license holder on such list has been called, the next such call shall go to the first license holder on the list. If two or more license holders are called to the scene of a collision, with no designation from vehicle operators, the vehicles to be towed may be selected by the permit holders in order of the wrecker rotation list, unless the police officer in charge requests that vehicles be removed prior to arrival of the selected license holder.

(f) If the license holder after arrival at the scene determines, in conjunction with the police officer in charge, that assistance is needed, then the police officer shall communicate that fact immediately to

the police communications center, or its authorized agent, which shall proceed under subsection (e) of this section.

(g) Failure of any license holder selected under subsection (d) or (e) of this section to deliver a wrecker to the scene within 15 minutes of notification, without justification acceptable to the police communications center or its authorized agent, shall cause the license holder to forfeit that call. If selection of the license holder occurred under subsection (d) of this section, then the police communications center or its authorized agent shall proceed as it would under subsection (e) of this section, so notifying the requesting police officer.

(h) If a license holder or his driver is towing a vehicle and receives a wrecker rotation call, the license holder or his driver must complete the original tow before accepting the rotation list call. If the license holder or his driver is unable to complete the original tow within the required response time as referenced in subsection (g) of this section, he must forfeit the call.

(i) A heavy-duty wrecker shall be called to the scene under the following circumstances:

(1) The incident involves a tandem-axle drive tractor or other heavy-duty vehicle.

(2) A safety officer or other appropriate official of a damaged vehicle's company requests a heavy-duty wrecker, unless honoring the request would result in unreasonable delay in clearing the street.

(3) The investigating police officer determines that a heavy-duty wrecker is required. The rotation procedure in this division applies to heavy-duty wreckers as well as all other emergency wreckers.

(4) A heavy-duty wrecker service shall comply with the storage lot requirements as referenced in section 48-139

(Code 1993, § 86-212; Ord. No. 89-17, § 12-30, 12-4-1989)

Sec. 48-213. Police officer not to influence selection of wrecker service.

A police officer investigating an accident or present at the scene of any wreck or collision shall not directly or indirectly recommend to any person involved in the wreck or collision the name of any permit holder and shall not directly or indirectly recommend or attempt to influence in any manner the decision of any persons in choosing or selecting a permit holder.

(Code 1993, § 86-213; Ord. No. 89-17, § 12-31, 12-4-1989)

Sec. 48-214. Soliciting business at the scene of an accident.

All wrecker drivers, owners or agencies are prohibited from soliciting the business of towing, removing or repairing any wrecked or disabled vehicle at the place where the accident has occurred by words, cards, circulars or gestures. A violation of this section shall be a Class C misdemeanor and upon conviction shall be punishable as provided in section 1-14.

(Code 1993, § 86-214; Ord. No. 89-17, § 12-32, 12-4-1989)

Sec. 48-215. Duties of emergency license holders in providing safe and prompt wrecker service.

(a) It shall be the obligation of all license holders under this article to operate wrecker businesses so as to provide safe and prompt removal of wrecked or disabled vehicles from the public streets of the city when properly called upon to do so in accordance with the provisions of this division.

(b) The duty to provide safe and prompt wrecker service upon call includes, but is not limited to the following specific duties:

(1) Upon receiving a call from the police communications center or its authorized agent, the license holder shall, in accordance with the provisions of this division, dispatch the requested wrecker to the desired location, or if the requested wrecker is not then available for service, the license holder shall immediately so inform the police communications center or its authorized agent.

(2) Upon arriving at the scene of a collision within the incorporated limits of the city, wrecker company personnel shall take directions from the police officer investigating that collision and shall obey all lawful orders given them by any police officer investigating such accident.

(3) Wrecker company personnel of the license holder which hauls any vehicle from the scene of a collision within the incorporated limits of the city shall remove the debris of the collision from the public street. This duty specifically includes removal of broken glass and metal fragments from the street, and the removal of any load of any vehicle from the travelled portion of the street, so as to eliminate any hazard to vehicular traffic. This does not include the responsibility to unload cargo from the wrecked vehicle in order to permit hauling. Such debris should be disposed of in a manner which will keep it out of gutters, storm sewers, streams, public rights-of-way and off of property not belonging to the wrecker company.

(4) Any license holder on the wrecker rotation list must tow or have towed the damaged vehicle to a repair shop or to a place designated by the owner, unless the owner of the vehicle is disabled by physical injury and is, therefore, unable to designate a location for the vehicle to be towed. The license holder shall then store the vehicle in a state-licensed depository located in the city until released to the vehicle owner or agent. The selling of such right to tow any disabled vehicle is prohibited. The wrecker operator shall sign the Form 319 provided by the police department prior to leaving the scene and shall accept the responsibility of removing the vehicle until relieved of this responsibility. A violation of this section shall subject a license holder to a Class C misdemeanor and fine as set forth in this article.

(5) No license holder shall store any vehicles or wreckers on the public streets or rights-of-way. License holders will use reasonable care in the storage of property not belonging to such license holders, so as to minimize the risk of theft or damage.

(6) All license holders shall comply with all ordinances of the city, including but not limited to the fire prevention code, traffic ordinances, and criminal ordinances. Failure to do so will subject a license holder to administrative penalties as set out in this article, in addition to other civil remedies or penal provisions of the statutes or ordinances in question.

(Code 1993, § 86-215; Ord. No. 89-17, § 12-33, 12-4-1989)

Sec. 48-216. Emergency wrecker service owner's records.

Each emergency wrecker license holder shall keep full and complete books of accounts and other records normally accepted in sound accounting practices, which records shall indicate a complete and accurate record of all expenses and income in connection with the actual operation of the emergency wrecker license and the maintenance of the equipment. The records must be kept so as to accurately reflect the various items of cost of operation and maintenance and must be made available to the director for audit upon request.

(Code 1993, § 86-216; Ord. No. 89-17, § 12-34, 12-4-1989)

Sec. 48-217. Parking of wrecker at scene of accident.

Whenever an emergency wrecker arrives at the place where a motor vehicle has been disabled by an accident, the emergency wrecker shall park his vehicle as close to the street curb as possible and otherwise dispose of it in such a manner as not to interfere with traffic.

(Code 1993, § 86-218; Ord. No. 89-17, § 12-36, 12-4-1989)

Sec. 48-218. Removal of vehicles from scene of accident.

(a) No wrecker or emergency wrecker driver shall remove any wrecked or disabled vehicle from the place where the accident has occurred or attach his wrecker to the wrecked or disabled vehicle until the driver of the vehicle has given permission or until the city police officer investigating the accident has completed his investigation.

(b) The fact that no police officer of the city is present at the scene of an accident when an emergency wrecker or a wrecker which has been summoned to the scene by the vehicle owner arrives shall not constitute an exception to this section. It shall be the duty of any wrecker owner or driver desiring to tow or haul any wrecked or disabled vehicle from the accident scene to notify the police department of the accident and to wait for the police officer to arrive and complete his investigation.

(c) If the driver of a wrecked or disabled vehicle has been rendered unable by the accident to give permission to an emergency wrecker driver to remove the wrecked or disabled vehicle, the investigating police officer shall notify the chief of police or other officer in charge of accident investigation of such fact, and such officer shall give such orders as may be necessary to remove the wrecked or disabled vehicle from the street. In any event, with or without the driver's permission, the investigating police officers are empowered to order any wrecked or disabled vehicle to be moved a distance sufficient to clear the street for traffic or taken to a state-approved storage lot within the city.

(Code 1993, § 86-219; Ord. No. 89-17, § 12-37, 12-4-1989)

Sec. 48-219. Supplemental permit for additional emergency wrecker.

Where an owner has obtained an emergency wrecker permit and thereafter desires to increase the number of wreckers to be operated, he shall follow the procedure set forth in section 48-177, except that the fee shall be as currently established or as hereafter adopted by resolution of the city council from time to time.

(Code 1993, § 86-220; Ord. No. 89-17, § 12-38, 12-4-1989)

Sec. 48-220. Supplemental permit for substitute emergency wrecker.

Whenever an owner wishes to discontinue the use of an emergency wrecker during the period covered by his permit and replace it with another, he shall follow the procedure set forth in section 48-177.

(Code 1993, § 86-221; Ord. No. 89-17, § 12-39, 12-4-1989)

Sec. 48-221. Storage lot requirements for emergency wreckers.

All emergency wrecker license holders under this article must be licensed by the state department of licensing and regulation and comply with its regulations. Operating without a state license or the violation of any of the requirements regulating storage facilities shall constitute a violation and will result in the removal of the wrecker service from the wrecker rotation list until such service complies with The Storage Facility Act, V.T.C.A., Occupations Code ch. 2303.

(Code 1993, § 86-222; Ord. No. 89-17, § 12-40, 12-4-1989)

Chapter 49 RESERVED

Chapter 50 ZONING [1]

ARTICLE I. - IN GENERAL

ARTICLE II. - ADMINISTRATION

ARTICLE III. - DISTRICT REGULATIONS

ARTICLE IV. - DEVELOPMENT STANDARDS

FOOTNOTE(S):

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State Law reference— Regulation of land use, structures, businesses and related activities, V.T.C.A., Local Government Code ch. 211 et seq.; planning and development, V.T.C.A., Local Government Code ch. 371 et seq. (Back)

ARTICLE I. IN GENERAL

Sec. 50-1. Title and purpose.

Sec. 50-2. Definitions.

Sec. 50-3. Effect of interpretation.

Sec. 50-4. Preserving rights in pending litigation and violations under existing ordinances.

Sec. 50-5. Penalty for violations.

Sec. 50-6. Validity.

Secs. 50-7—50-30. Reserved.

Sec. 50-1. Title and purpose.

(a) This chapter shall be known and may be cited as the city's "comprehensive zoning ordinance" or the "zoning ordinance."

(b) As authorized by V.T.C.A., Local Government Code ch. 211, the zoning regulations and districts as established in this chapter have been made in accordance with an adopted comprehensive plan for the purpose of promoting the public health, safety, morals and general welfare of the city. They have been designed to lessen the congestion in the streets; to secure safety from fire, panic and other dangers; to ensure adequate light and air; to prevent the overcrowding of land and thus avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, wastewater treatment, schools, parks and other public requirements. They have been made with reasonable consideration, among other things, for the character of each zoning district and its peculiar suitability for the particular uses specified; and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the city.

(Ord. No. 2008-01, § 2, 2-4-2008)

Sec. 50-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abut means to physically touch or border upon; to share a common property line but not overlap. See *adjoining lot* or *land.*

Accessory building/structure (business or industry) means in the nonresidential districts, a subordinate building to the main building that does not exceed the height of the main building and does not exceed 50 percent of the floor area of the main building, and that is used for purposes accessory and incidental to the main use (see *Accessory use*).

Accessory building/structure (residential) means in a residential district, a subordinate building that is detached from the primary on-site structure and is used for a purpose that is customarily incidental to the main structure, but not involving the conduct of a business, unless permitted as a home occupation (i.e., the building area must be less than that of the main structure). Examples may include, but are not limited to, the following: a private garage for automobile storage, tool shed, greenhouse as a hobby, home workshop, children's playhouse, storage building, garden shelter, etc.

Accessory dwelling means 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 involved in the conduct of a business.

Accessory use means a use that is customarily incidental, appropriate and subordinate to the principal use of land or buildings and that is located upon the same lot therewith (i.e., the land/building area that is used for the accessory use) must be less than that used for the primary use.

Adjoining lot or land means a lot or parcel of land that shares all or part of a common lot line with another lot or parcel of land.

Airport or *landing field* means a place where aircraft can land and take off that is usually equipped with hangars, facilities for aircraft refueling and repair, and various accommodations for passengers.

Alley means a minor right-of-way that is dedicated to public use and which affords a secondary means of vehicular access to the back or side of properties otherwise abutting a street, and which may be used for public utility purposes.

All-weather surface means a created surface, such as brick, stone, concrete, or asphalt, placed on the land to facilitate pedestrian or vehicular passage, as may be required. The term "all-weather surface" also may be referred to as paving or pavement.

Ambulance service means provision of private (not operated by the city) emergency transportation, which may include mobile medical care, and which may include storage and maintenance of vehicles.

Amusement devices/arcade means any building, room, place or establishment of any nature or kind, and by whatever name called, where more than ten percent of the public floor area is devoted to four or more amusement devices that are operated for a profit, whether the same is operated in conjunction with any other business or not, including, but not limited to, such amusement devices as coin-operated pinball machines, video games, electronic games, shuffle boards, pool tables or other similar amusement devices. However, the term "amusement device/arcade," shall not include musical devices, billiard tables which are not coin-operated, machines that are designed exclusively for small children, and devices designed to train persons in athletic skills or golf, tennis, baseball, archery or other similar sports.

Amusement, commercial (indoor), means an amusement enterprise that is wholly enclosed within a building which is treated acoustically so that noise generated by the enterprise is not perceptible at the bounding property line, and that provides activities, services and/or instruction for the entertainment of customers or members, but not including amusement arcades. Uses may include, but are not limited to, the following: bowling alley, ice skating rink, martial arts club, racquetball/handball club, indoor tennis courts/club, indoor swimming pool or scuba diving facility, and other similar types of uses.

Amusement, commercial (outdoor), means an amusement enterprise offering entertainment and/or games of skill to the general public for a fee wherein any portion of the activity takes place outdoors and including, but not limited to, a golf driving range, archery range, miniature golf course, batting cages, go-cart tracks, amusement parks, and other similar types of uses.

Amusement, commercial (temporary), means outdoor or indoor commercial amusement provided on a temporary basis, examples of which include a carnival or haunted house.

Animal kennel means a commercial establishment in which dogs or other domesticated animals are housed, groomed, bred, boarded, trained, or sold, all for a fee or compensation.

Antique shop (no outside sales or storage) means a retail establishment engaged in the selling of works of art, furniture and/or other artifacts of an earlier period, with all sales and storage occurring inside a building.

Apartment. See *Dwelling-multiple-family.*

Appliance service and repair means the maintenance and rehabilitation of appliances that are customarily used in the home, including, but not limited to, washing and drying machines, refrigerators, dishwashers, trash compactors, ovens and ranges, countertop kitchen appliances, vacuum cleaners, etc., but not including appliances/equipment which have internal combustion engines.

Approved plan means a plan that has been granted final approval by the appropriate approving authority.

Art gallery/museum/dealer means an institution for the collection, display and/or distribution of objects of art or science, and which is typically sponsored by a public or quasi-public agency and generally open to the public.

Assisted living facility (continuing care retirement community) means a congregate residence facility for ten or more elderly (over 55 years of age) persons, regardless of legal relationship, who need limited assistance with daily living activities. A limited number of support services such as meals, laundry, housekeeping, transportation, social/recreational activities, hairdressing, etc. may be provided or associated with the assisted living facility. Units may be attached or detached, single- or double-occupancy, and may include limited or full kitchen facilities. Full-time medical or nursing care is not typically provided by the facility, but may be privately arranged by individual residents on a part-time or temporary basis (e.g., visiting nurses, etc.).

Auto accessories (retail sales only) means the use of any building or other premises for the primary inside display and sale of new or used parts for automobiles, panel trucks or vans, trailers, or recreation vehicles.

Auto dealer (new auto servicing and used auto sales as accessory uses) means retail sales of new automobiles or light load vehicles, including, as an accessory use, the sales of used automobiles or light load vehicles and the service of new or used vehicles.

Auto dealer (primarily used auto sales) means retail sales, or offering for sale, primarily used automobiles or light load vehicles.

Auto rental means storage or renting of automobiles and light trucks.

Auto repair (major) means general repair or reconditioning of engines, air conditioning systems and transmissions for motor vehicles; wrecker service; collision repair services including body, frame or fender straightening or repair; customizing; painting; vehicle steam cleaning; undercoating and rustproofing; those uses listed under "auto repair, minor"; and other similar uses.

Auto repair (minor) means minor repair or replacement of parts, tires, tubes and batteries; diagnostic services; minor maintenance services such as grease, oil, spark plug and filter changing; tune-ups; emergency road service; replacement of starters, alternators, hoses and brake parts; automobile washing and polishing; performing state inspections and making minor repairs necessary to pass said inspection; normal servicing of air conditioning systems; and other similar minor services for motor vehicles except heavy load vehicles, but not including any operation named under "auto repair, major" or any other similar use.

Auto storage or *auto auction* means the storage or impoundment, on a lot or tract which is paved in accordance with parking lot paving requirements set forth in this chapter, of operable automobiles for the purpose of holding such vehicles for sale, distribution and/or storage. The term "auto storage" or "auto auction" shall not include the storage of wrecked or inoperable vehicles (see *wrecking yard*).

Automobile means a self-propelled mechanical vehicle designed for use on streets and highways for the conveyance of goods and people, including, but not limited to, the following: passenger cars, light duty trucks and sport utility vehicles, vans and minivans, motor scooters and motorcycles.

Automobile accessory installation (minor) means minor installation of minor automobile accessories such as car alarms, radio and stereo equipment, window tinting, pinstriping, cellular telephones and similar accessories.

Automobile repair garage means an establishment providing major or minor automobile repair services to all motor vehicles except heavy load vehicles.

Automobile wash (full-service/detail shop) means washing, waxing or cleaning of automobiles or light-duty trucks where the owner of the vehicle does not actually wash the vehicle. The owner either leaves the vehicle and comes back to retrieve it later, or the owner waits in a designated area while employees of the car wash facility vacuum, wash, dry, wax and/or detail the vehicle for a fee.

Automobile wash (self-service) means washing, waxing or cleaning of automobiles or light duty trucks where the owner of the vehicle causes the vehicle to become washed. One type of unattended car wash facility utilizes automated self-service (drive-through/rollover) wash bays and apparatus in which the vehicle owner inserts money or tokens into a machine, drives the vehicle into the wash bay, and waits in the vehicle while it is being washed. The other type of unattended facility is comprised of wand-type self-service (open) wash bays in which the vehicle owner drives the vehicle into the wash bay, gets out of the vehicle, and hand washes the vehicle with a wand-type apparatus by depositing coins or tokens into a machine.

Automotive gasoline or motor fuel service station means any building, land area or other premises, or portion thereof, used or intended to be used for the retail dispensing or sales of automotive fuels, lubricants and automobile accessories, including those operations listed under "auto repair, minor." Vehicles which are inoperative or are being repaired may not remain parked outside these facilities for a period greater than 48 hours.

Bakery, retail means a facility less than 3,000 square feet for the production and/or sale of baked goods.

Bakery, (wholesale) means a manufacturing facility over 3,000 square feet for the production and distribution of baked goods and confectioneries to retail outlets.

Barn means a structure intended for the purpose of storing farming and ranching related equipment and/or housing livestock.

Basement (or cellar) means a portion of a building that is partly or wholly underground. For the purposes of height measurement, a basement shall be counted as a story when more than one-half of its height is above the average level of the adjoining ground or when subdivided and used for commercial or dwelling purposes by other than a janitor employed on the premises.

Bed and breakfast inn means a dwelling occupied as a permanent residence by an owner or renter which serves breakfast and provides or offers sleeping accommodations in not more than five rooms for transient guests for compensation, generally for a period not to exceed seven days.

Block means an area within the city enclosed by streets and occupied by or intended for buildings: or, if said word is used as a term of measurement, it shall mean the distance along a side of a street between the nearest two streets which intersect said street on said side. In cases where the platting is incomplete or disconnected, the city manager or his designee shall determine the outline of the block.

Board of adjustments (BOA) means a board which is appointed by the city council, and which is authorized to approve variances and special exceptions to this chapter (i.e., variances), and to hear and decide any appeals that allege error in an order, requirement, decision or determination made by an

administrative official in the enforcement of the zoning ordinance. The term "board of adjustments" is also referred to as the zoning board of adjustments.

Buffer means a specified land area, together with the planting and landscaping required on any building site, which may also contain a barrier, such as a berm or a fence, where such additional screening is necessary to achieve the desired level of buffering between various activities, and shall meet the minimum requirements to provide a year-round visual obstruction.

Building means any structure intended for shelter, occupancy, housing or enclosure for persons, animals or chattel. When separated by dividing walls without openings, each portion of such structure so separated shall be deemed a separate building.

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Building height means the vertical distance from finished grade to the top of the highest roof beams on a flat or shed roof, and the average distance between the eaves and the ridge level for gable, hip, and gambrel roofs (see Illustration 50-2-1). In measuring the height of a building, the following structures shall be excluded: chimneys, cooling towers, elevator bulkheads, penthouses, tanks, water towers, radio and television towers, ornamental cupolas, domes or spires, flagpoles, and parapet wall not exceeding four feet in height.

Illustration 50-2-1a: Measuring building height

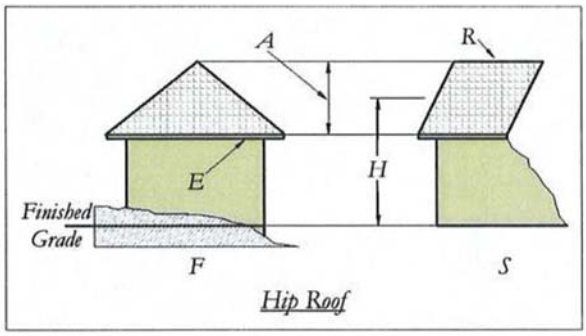
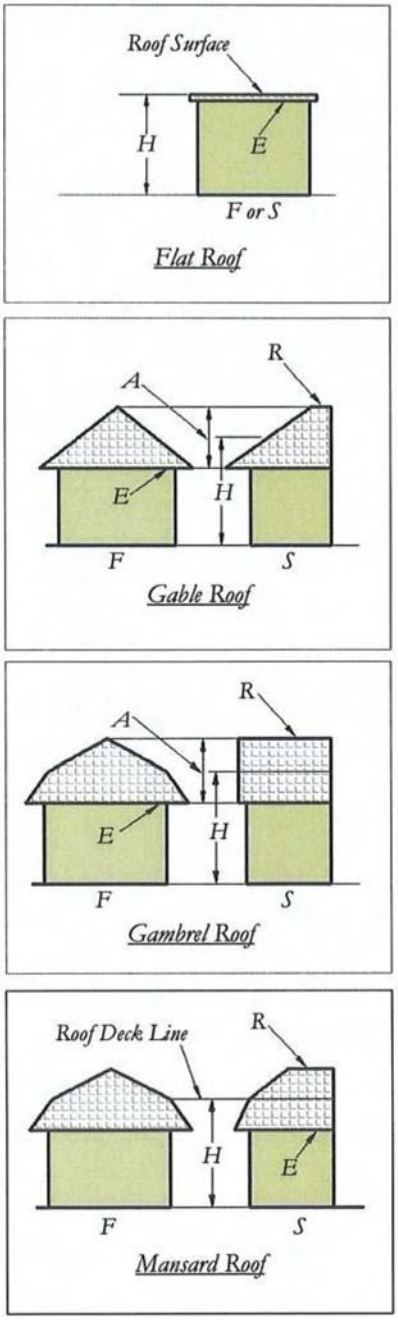
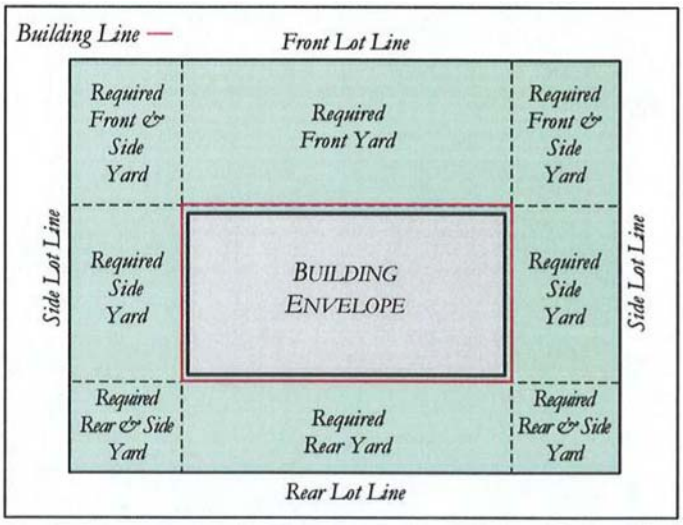


Illustration 50-2-1b: Measuring building height



Building line means a line parallel, or approximately parallel, to any lot line at a specific distance therefrom, marking the minimum distance from the lot line that a building may be erected, and marking the building envelope, which is the area in which a building may be erected (see Illustration 50-2-2).

Illustration 50-2-2: Building line and envelope



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Building materials sales (indoor or outdoor) means materials, tools, and/or hardware customarily used in the construction of buildings and other structures, including facilities for storage of materials for retail sales and is sometimes referenced as a home improvement center. The term "outdoor" means the storage of materials and products outside of the main building.

Building official means the inspector or administrative official charged with responsibility for issuing permits and enforcing this chapter and the building code of the city.

Building site. See *Lot.*

Building, main/primary/principal means a building in which the principal use of the lot on which it is situated is conducted.

Caretaker's or guard's residence means a residence located on a premises with a main residential or nonresidential use and occupied only by a caretaker or guard employed on the premises (e.g., residence for guard in a private street development, residence for a guard/manager/caretaker for a self-storage facility or a restricted access business park, etc.).

Carport means a structure that is open on a minimum of two sides and designed or used to shelter vehicles. The term "carport" is also called a covered parking area.

Cemetery and/or mausoleum means land used or intended to be used for the burial of the human dead and dedicated for cemetery purposes, including columbariums, crematories, mausoleums, and mortuaries when operated in conjunction with and within the boundaries of such cemetery.

Cemetery, animal, means same as cemetery except only for the burial of dead animals.

Certificate of occupancy means an official certificate issued by the city through the building official which indicates conformance with the zoning regulations and building codes and which authorizes legal use of the premises for which it is issued.

Child day care center (business) means a commercial institution or place designed for the care or training of six or more unrelated children under 14 years of age for less than 24 hours a day. The term "child day care center" is also referred to as a day care.

Child day nursery is also referred to as a day nursery. See *family home (child care in place of residence).*

Church/temple/place of worship means a building for regular assembly for religious worship which is used primarily and designed for such purpose and those accessory activities which are customarily associated therewith, and the place of residence for ministers, priests, nuns or rabbis on the premises

(tax exempt as defined by state law). For the purposes of this chapter, Bible study and other similar activities which occur in a person's primary residence shall not apply to this definition.

Civic center (municipal) means a building or complex of buildings that house municipal offices and services, and which may include cultural, recreational, athletic, food service, convention and/or entertainment facilities owned and/or operated by a municipality.

Cleaning plant (commercial laundry) means an industrial facility where fabrics are cleaned with substantially nonaqueous organic solvents on a commercial or wholesale basis.

College or university means an academic institution of higher learning accredited or recognized by the state and covering a program or series of programs of academic study.

Community center (public) means a building or complex of buildings that house cultural, recreational, athletic, food service and/or entertainment facilities owned and/or operated by a governmental agency or private nonprofit agency.

Community home means a place where not more than six physically or mentally impaired or handicapped persons are provided room and board, as well as supervised care and rehabilitation by not more than two persons as licensed by the state department of mental health and mental retardation (see V.T.C.A., Human Resources Code ch. 123).

Community or social building means a building used for recreational, social, educational, and cultural activities generally owned, maintained and operated by a homeowners' association for the enjoyment of its resident members.

Comprehensive plan means a document adopted by the city that consists of graphic and textual policies which govern the future development of the city and which consists of various components governing specific geographic areas and functions and services of the city.

Concrete or asphalt batching plant (permanent) means a permanent manufacturing facility for the production of concrete or asphalt.

Concrete or asphalt batching plant (temporary) means a temporary manufacturing facility for the production of concrete or asphalt during construction of a project and to be removed when the project is completed.

Convenience store (with or without gasoline sales) means a retail establishment selling food for off-premises consumption and a limited selection of groceries and sundries (and possibly gasoline, if pumps are provided). The term "convenience store (with or without gasoline sales)" does not include or offer any automobile repair services.

Copy shop means an establishment which reproduces, in printed form, individual orders from a business, profession, service, industry or government organization and occupies less than 4,000 square feet.

Contractor's shop with outside storage yard means a building, part of a building, or land area for the construction or storage of materials, equipment, tools, products, and vehicles.

Country club (private) means a land area and buildings which may include a golf course, clubhouse, dining room, swimming pool, tennis courts and similar recreational or service uses available only to members and their guests.

Court means an open, unobstructed space, bounded on more than two sides by the walls of a building. An inner court is entirely surrounded by the exterior walls of a building. An outer court has one side open to a street, alley, yard, or other permanent open space.

Coverage means the lot area covered by some type of impervious surface, which includes buildings located thereon, overhanging roofs, and parking areas. Also see *impervious surface.*

Dance hall/dancing facility means an establishment open to the general public for dancing (any sales of alcoholic beverages for on-premises consumption shall be subject to requirements and use restrictions for private clubs). See *private club.*

Density means the total number of residential dwelling units allowed upon a given tract of land, usually expressed in total number of units per gross acres or net acre.

Detached means having no physical connection above the top of the floor line of the first floor with any other building or structure.

Distribution center means building or facility used for the storage and distribution of wholesale items or products.

District means a section of the city for which regulations, including height, area and use, governing the section have been established and are uniform.

Drapery or furniture upholstering shop means an establishment for the production, display and sale of draperies and soft coverings for furniture.

Drinking establishment means any building or premises primarily engaged in the retail sale of alcoholic beverages such as beer, ale, wine, and liquor, for consumption on the premises. Typical establishments include bars, night clubs, lounges, and dance halls.

Duplex (two-family). See *dwelling, two-family.*

Dwelling means any building, or portion thereof, which is designed or used as living quarters for one or more families.

Dwelling, duplex townhome, means two single-family dwellings attached along a single common property line, each unit designed to be occupied by one family. While the structures may appear to be a duplex, there is a significant difference. Each unit is located on its own platted lot with separate utilities. The buildings, while attached, are separately owned with a common wall meeting the fire and separation requirements of the adopted fire and building codes.

Dwelling, HUD-code manufactured home. See *Manufactured housing.*

Dwelling, industrialized home. See *Manufactured housing.*

Dwelling, manufactured home. See *Manufactured housing.*

Dwelling, multiple-family, means three or more dwelling units on a single lot designed to be occupied by three or more families living independently of one another, exclusive of hotels or motels. The term "dwelling, multiple-family," includes three-family units (triplex) and four-family units (quadraplex), as well as traditional apartments.

Dwelling, single-family attached or *townhome* means a dwelling which is joined to another dwelling at one or more sides by a party (i.e., shared) wall, which is designed for occupancy by one family, and which is located on a separate lot delineated by front, side and rear lot lines.

Dwelling, single-family detached, means a dwelling designed and constructed as a free-standing structure for occupancy by one family and located on a lot or separate building tract having no physical connection to a building located on any other lot or tract. The term single-family dwelling occupied by one family, has a common entrance, one common kitchen facility and is utilized as one living quarters.

Dwelling, two-family or *duplex* means two attached dwellings in one structure under one common ownership, each side designed to be occupied by one family.

Dwelling unit means a building or portion of a building which is arranged, occupied or intended to be occupied as living quarters for one family, and includes facilities for food preparation and sleeping. One dwelling unit occupied by one family has a common entrance, utilities, kitchen and food preparation facilities and sleeping and restroom facilities accessible by all. (See *Family.*)

Dwelling, zero-lot-line or *patio home* means a single-family dwelling on a separately platted lot which is designed such that one side yard is reduced to zero feet in order to maximize the width and usability of the other side yard, and which permits the construction of a detached single-family dwelling with one side (i.e., wall) of such dwelling placed on the side property line.

Easement means a grant of one or more of the property rights by the property owner to and/or for the use by the public, a corporation or another person or entity.

Eating establishment means any building or premises primarily engaged in the retail sale of prepared food and drink for on-site or off-site immediate consumption.

Eating establishment (with drive-in service) means an eating establishment where food and/or drinks are primarily served to customers in motor vehicles, or where facilities are provided on the premises which encourage the serving and consumption of food in automobiles on or near the restaurant premises.

Eating establishment (with drive-through service) means an eating establishment where customers are primarily served at tables or are self-served, where food is consumed on the premises, and which may include a drive-through windows.

Eating establishment (with no drive-through service) means an eating establishment where customers are primarily served at tables or are self-served, where food is consumed on the premises, and which do not have a drive-through window.

Educational facilities means public and private primary, secondary and post-secondary educational facilities offering instruction in the branches of learning and study required to be taught by the state education agency, and such federally funded educational programs for preschool children as the head start program.

Electrical substation means a subsidiary station in which electric current is transformed.

Fair ground/rodeo means an area or space either outside or within a building for the display of animals, exhibitions, topic-specific goods, or information.

Family means one or more persons related by blood, marriage, or adoption; or a group not to exceed four persons not all related by blood or marriage, adoption or guardianship, occupying a dwelling unit and living together as a single housekeeping unit.

Family home (child care in place of residence) means a facility that regularly provides care in the caretaker's own residence for not more than six children under 14 years of age, excluding the caretaker's own children, and that provides care after school hours for not more than six additional elementary school siblings of the other children given care. However, the number of children, including the caretaker's own, provided care at such facility shall not exceed 12 at any given time. No outside employment is allowed at the facility. This facility shall conform to V.T.C.A., Human Resources Code ch. 42, and in accordance with such standards as may be promulgated by the state department of family and protective services. The term "family home (child care in place of residence" is also referred to as child day nursery and day nursery.

Farm (ranch, garden, crops or orchard) means an area used for growing usual farm products, vegetables, fruits, trees, and grain and for the raising thereon of the usual farm animals such as horses, cattle, and sheep and including the necessary accessory uses for raising, treating, and storing products raised on the premises, but not including the commercial feeding of offal or garbage to swine or other animals and not including any type of agriculture or husbandry specifically prohibited by ordinance or law.

Feed and grain store/farm supply store means an establishment for the selling of corn, grain and other food stuffs for animals and livestock, and including implements and goods related to agricultural processes, but not including farm machinery.

Financial institution means an establishment for the custody, loan, exchange and/or issue of money, the extension of credit, and/or facilitating the transmission of funds, examples of which include banks, saving and loans, and credit unions.

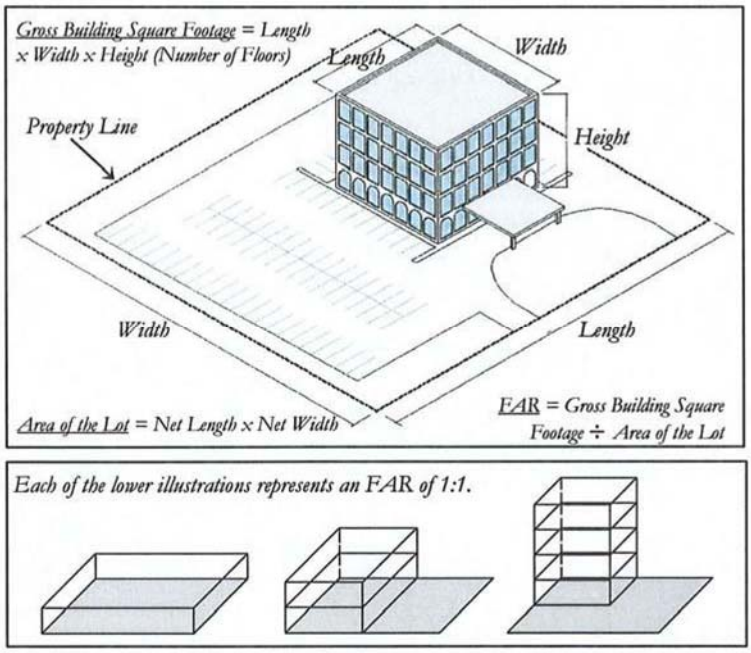
Floodplain means an area of land subject to inundation by a 100-year frequency flood as determined using standard engineering practices and generally as shown on the FIRM flood insurance rate map of the city.

Floor area, gross means the total gross square feet of floor space within the outside dimensions of a building including each floor level, but excluding any space where the floor-to-ceiling height is less than six feet, carports, residential garages, open porches, and breezeways.

Floor area, minimum. See *Minimum floor area per dwelling unit.*

Floor area ratio (far) means the floor area of a main building or buildings on a lot, divided by the lot area (see Illustration 50-2-3). The maximum FAR permitted by this chapter shall be calculated by dividing the gross square footage of the buildings to the net (after right-of-way dedication) area of the lot (measured in square feet). Any below grade mechanical rooms, parking garages, or other nonoccupied areas shall not be included in the gross square footage of the buildings for the purposes of this calculation.

Illustration 50-2-3: Floor area ratio (FAR)



Florist shop (retail only) means an establishment for the display and retail sale of flowers, small plants and accessories.

Food or grocery store means a retail business establishment that displays and sells consumable goods that are not to be eaten on the premises. Prepared food may be sold only as a secondary or accessory use.

Food processing means a manufacturing or light industrial use that primarily deals with the processing and packaging of food (such as dairy or grain) products that are intended for human consumption, but which are not typically sold in volume to end users on the premises. Incidental retail sales of food products (e.g., bread and baked goods, dairy products such as cheese, etc.) created and packaged on the premises may be allowed as an accessory use.

Fortunetelling and similar activities mean a use involving the foretelling of the future in exchange for financial or other valuable consideration. Fortunetelling shall be limit to uses where the fortune is told through astrology, tarot card reading, crystal gazing, palmistry or any similar means.

Franchised private utility (not listed) means a utility such as one distributing heat, chilled water, closed circuit television or similar service and requiring a franchise to operate in the city.

Fraternal organization means an organized group having a restricted membership and specific purpose related to the welfare of the members such as Elks, Masons, Knights of Columbus, or a labor union.

Fraternity or *sorority house* means a building other than a hotel that is occupied only by individuals enrolled in a college or university located within the city and persons to attend the house and supervise activities of the fraternity or sorority. Except for the attendants, each resident must be a member of a

fraternity or sorority that is recognized by the college or university and chartered by a state or national organization.

Front yard. See *Yard, front.*

Funeral home means a place for the storage of human bodies prior to their burial or cremation, or a building used for the preparation of the deceased for burial and the display of the deceased and ceremonies connected therewith before burial or cremation.

Furniture and appliance store means and includes retail stores selling new goods for furnishing the home, including, but not limited to, furniture, floor coverings, draperies, glass and chinaware, domestic stoves, refrigerators, and other household electrical and gas appliances.

Furniture store (new and used) means the same as a "furniture and appliance store," except sales may include used items.

Garage/accessory dwelling means a residential dwelling unit attached to or over a garage but not attached to the main residential structure.

Garage, private, means an enclosed (on at least three sides) accessory building, or a part of a main building, used for storage of automobiles and used solely by the occupants and their guests. A private garage is also called an enclosed parking space.

Garden shop means a facility which is engaged in the selling of flowers, ornamental plants, shrubs, trees, seeds, garden and lawn supplies, and other materials used in planting and landscaping, but not including cultivation and propagation activities outside a building.

Gasoline service or filling station. See *Automotive gasoline* or *motor fuel service station.*

General commercial plant means establishments other than personal service shops for the treatment and/or processing of products as a service on a for-profit basis including, but not limited to, newspaper printing, laundry plant, or cleaning and dyeing plants.

General manufacturing. See *industrial, manufacturing.*

General retail stores means and includes retail stores which sell a number of lines of primarily new merchandise including but not limited to dry goods, apparel and accessories, furniture and home furnishings, small wares, small appliances, hardware, and food. The stores included in this group are known as department stores, variety stores, general merchandise stores, general stores, etc. (see *retail shop*).

Golf course means an area of 20 acres or more improved with trees, greens, fairways, hazards, and which may include clubhouses; the golf course may be privately or publicly owned and operated.

Grade means for buildings having walls adjacent to one street only, the elevation of the sidewalk at the center of the wall adjacent to the street. For buildings having walls adjacent to more than one street, the grade is the average of the elevation of the sidewalks at the center of all walls adjacent to the streets. For buildings having no wall adjacent to a street, the grade is the average level of the finished surface of the ground adjacent to the exterior walls of the building. Where no sidewalk has been constructed, the city engineer shall establish such sidewalk level or its equivalent for the purpose of this chapter.

Group day-care home means a facility that provides care for seven to 12 children less than 14 years of age less than 24 hours a day.

Gymnastic or dance studio means a building or portion of a building used as a place of work for a gymnast or dancer or for instructional classes in gymnastics or dance.

Hauling or storage company. See *Motor freight company.*

Health club (indoor) includes, but is not limited to, an establishment which provides facilities and equipment (e.g., gymnasiums, weight rooms, swimming pools/spas, exercise apparatus, instruction/classes, etc.) which are intended to promote health, fitness, weight reduction and/or similar health-related activities. Such facilities may include such accessory uses as food service, sales of

sundries and apparel, and child care services, provided that such accessory uses are clearly incidental to the primary use and are for the use of studio patrons only (i.e., not the general public).

Heavy load vehicle means a self-propelled vehicle having a manufacturer's recommended gross vehicle weight (GVW) of greater than 16,000 pounds (including trailers), such as large recreational vehicles (originally manufactured as RVs, not converted), tractor-trailers, buses, vans, and other similar vehicles. The term "truck" shall be construed to mean "heavy load vehicle" unless specifically stated otherwise.

Heavy machinery sales and storage means a building or open area used for the display, sale, rental or storage of heavy machinery, tractors or similar machines, or a group of machines which function together as a unit.

Heliport means an area of land or water or a structural surface which is used, or intended for use, for the landing and taking off of helicopters, and any appurtenant areas which are used, or intended for use for heliport buildings and other heliport facilities.

Helistop means the same as a heliport, except that no refueling, maintenance, repairs or storage of helicopters is permitted.

Home for aged, residence, means a home where elderly people are provided with lodging and meals without nursing care being a primary function. A residence home for aged is also referred to as an assisted living facility.

Home occupation means an occupation carried on in a dwelling unit, or in an accessory building to a dwelling unit, by a resident of the premises only, which is clearly incidental and secondary to the use of the premises for residential purposes (see section 50-117), and which can be conducted without any significantly adverse impact on the surrounding neighborhood.

Hospital means an institution that is licensed by the state and that falls within one of the following definitions:

> *Acute care.* The term "acute care" means an institution where sick or injured patients are given medical and/or surgical treatment intended to restore them to health and an active life.
>
> *Chronic care.* The term "chronic care" means an institution where those persons suffering from illness, injury, deformity and/or deficiencies pertaining to age are given medical care and treatment on a prolonged or permanent basis.

Hotel/motel means a facility offering temporary lodging accommodations or guest rooms on a daily rate to the general public and providing additional services, such as restaurants, meeting rooms, housekeeping service and recreational facilities. The term "guest room" shall be defined as a room designed for the overnight lodging of hotel guests for an established rate or fee. The term "hotel/motel" also includes an extended stay lodging facility that may be used for weekly or monthly occupancy periods.

Household care facility means a dwelling unit which provides residence and care to not more than nine persons, regardless of legal relationship, who are elderly; disabled; orphaned, abandoned, abused, or neglected children; victims of domestic violence; or rendered temporarily homeless due to fire, natural disaster or financial setbacks, living together with not more than two supervisory personnel as a single housekeeping unit. This definition is subject to the Assisted Living Facility Licensing Act (V.T.C.A., Health and Safety Code ch. 247) and Community Homes for Disabled Persons Location Act, V.T.C.A., Human Resources Code ch. 123. A household care facility is also referred to as a hospice.

Household care institution means a facility which provides residence and care to ten or more persons, regardless of legal relationship, who are elderly; disabled; orphaned, abandoned, abused, or neglected children; victims of domestic violence; convalescing from illness; or temporarily homeless due to fire, natural disaster, or financial setback together with supervisory personnel.

HUD regulations means The Mobile Home Construction and Safety Standard Act, 42 USC, section 5401 et seq., as the same now exists or as is amended.

Impervious surface means a surface that has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water.

Incidental or accessory retail and service uses means any use different from the primary use but which compliments and/or supplements the primary use (e.g., a sundries shop that serves tenants of an office building or hospital). The term "incidental" shall mean an area which constitutes not more than 15 percent of the main use.

Industrial manufacturing means establishments engaged in the manufacturing or transformation of materials into new products. These establishments are usually described as plants and factories, and characteristically use power-driven machines and materials handling equipment. Manufacturing production is usually carried on for the wholesale market, rather than for direct sale to the domestic consumer.

Institution for alcoholic, narcotic or psychiatric patients means an institution offering out-patient treatment to alcoholic, narcotic or psychiatric patients.

Institutional use means a nonprofit, religious, or public use, such as a church, library, public or private school, hospital, or government-owned or operated building, structure or land used for public purposes.

Japanning and shellacking works means an establishment engaged in applying finish coats to wood and like materials, specifically including the application of enamels, lacquers, sealants, and/or varnishes.

Junk means any manufactured good, appliance, fixture, furniture, machinery, vehicle, personal property or other thing or part thereof, whether of value or valueless, that is demolished, discarded, dismantled, dilapidated, or so worn, deteriorated, or in such condition as to be generally unusable and/or inoperable. Without limiting the generality of the aforementioned, anything that is water soluble, primarily organic, or not typically associated with junkyard activities may not be considered junk.

Junkyard means the outdoor use of any lot for the sale, storage, display, dismantling, demolition, abandonment or discarding of junk.

Kennels (indoor pens) means an establishment with indoor pens in which more than four dogs or domesticated animals more than one year old are housed, groomed, bred, boarded, trained and/or sold for commercial purposes.

Kennels (outdoor pens) means an establishment with outdoor pens in which more than four dogs or domesticated animals more than one year old are housed, groomed, bred, boarded, trained and/or sold for commercial purposes.

Kiosk means a small, freestanding, one-story accessory structure having a maximum floor area of 100 square feet and used for retail purposes, such as automatic teller machines, or the posting of temporary information and/or posters, notices and announcements. If a kiosk is to be occupied, it shall have a minimum floor area of 50 square feet.

Kitchen, residential, means, generally, that portion of a residential dwelling that is devoted to the preparation and/or cooking of food for the purpose of consumption by residents of the dwelling. The term "kitchen" generally indicates the presence of complete cooking facilities (i.e., stove, oven, microwave oven and/or refrigerator) as differentiated from a kitchenette which provides very limited cooking facilities (i.e., single-burner hot plate, under-counter refrigerator, microwave oven only, etc.).

Laboratory equipment manufacturing means a facility that makes or produces equipment or products used for research or testing.

Laboratory, scientific or research means an establishment that engages in research, testing or evaluation of materials or products, but not medical-related (see subsection (5) of *medical facilities*).

Landscaping means material such as, but not limited to, grass, ground covers, shrubs, vines, hedges, trees or palms, and nonliving durable materials that are commonly used in landscaping such as, but not limited to, rocks, pebbles, sand, walls or fences, but excluding paving. The following words, terms, or phrases, when used in the landscaping section (section 50-113) of this chapter shall have the following meanings ascribed to them, except where the context clearly indicates a different meaning:

Building site means the tract, parcel or lot of land area which is being developed and which is designated on the building permit application, together with all contiguous tracts or parcels of land held under common ownership and any existing buildings and appurtenant parking.

Diameter means the measurement of a tree at the specified distance above ground level.

Dripline means the periphery of an area underneath a tree, which would be encompassed by the perpendicular line dropped from the outermost edges of the crown of the tree.

Ground cover means grasses and other plants grown to keep soil from being blown or washed away and planted so as to develop full coverage within eighteen months. Bank, mulches, gravel, and other pervious material are included in this definition for use as ground cover under trees and shrubs.

Landscape development includes trees, shrubs, ground cover, vines, or grass installed in planting areas having a minimum of ten square feet of actual planting area and a minimum inside dimension on any side of 18 inches.

Shrub means any self-supporting woody, deciduous or evergreen species, which is generally multi-stemmed and sold by height or spread and measured in inches or feet, as normally will grow in the county.

Tree means any self-supporting wood plant, evergreen or deciduous, which at the time of planting has a caliper equal to or greater than specified, which is not less than six feet in height as measured from the root collar, and shall be of a species that normally grows to an overall height of a minimum of 15 feet in the county.

Laundromat washateria/self-service means a facility where patrons wash, dry and/or dry clean clothing and other fabrics in machines on the premises that are operated by the patron/general public.

Laundry/dry cleaning (retail only, drop off/pick up) means a facility where clothing and other fabrics are washed, dried, and/or dry cleaned in machines on the premises that are operated by an employees of the facility.

Light load vehicle means a self-propelled vehicle having a manufacturer's recommended gross vehicle weight (GVW) not greater than 16,000 pounds and having no more than two axles, such as pickup trucks, sport utility vehicles, vans and minivans, recreational vehicles (less than 32 feet in length), campers and other similar vehicles, but not including automobiles and motorcycles.

Light manufacturing or industrial use means manufacturing of finished products or parts, predominantly from previously prepared materials, including fabrication, assembly, and packaging of such products, and incidental storage, sales and distribution of such products, but excluding basic industrial processing.

Loading space means an off-street space or berth used for delivery and loading/unloading of vehicles.

Local utility line means the facilities provided by a municipality or a franchised utility company for distribution or collection of gas, water, surface drainage water, sewage, electric power or telephone service, including pad- and pole-mounted transformers.

Lot means a designated parcel, tract, or areas of land established by plat, subdivision, or otherwise permitted by law (as specified in V.T.C.A., Local Government Code ch. 212), to be separately owned, used, developed, or built upon.

Lot area means the total net area within lot lines and not including portions of streets and alleys.

Lot, corner, means a lot which has at least two adjacent sides abutting for their full lengths upon a street. See Illustration 50-2-4.

Illustration 50-2-4: Descriptions of various lot types

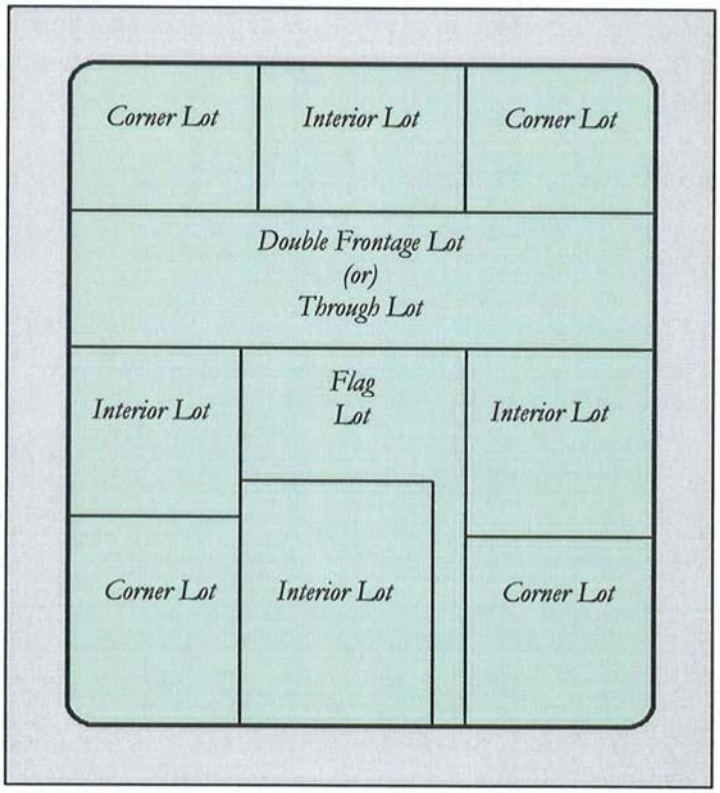
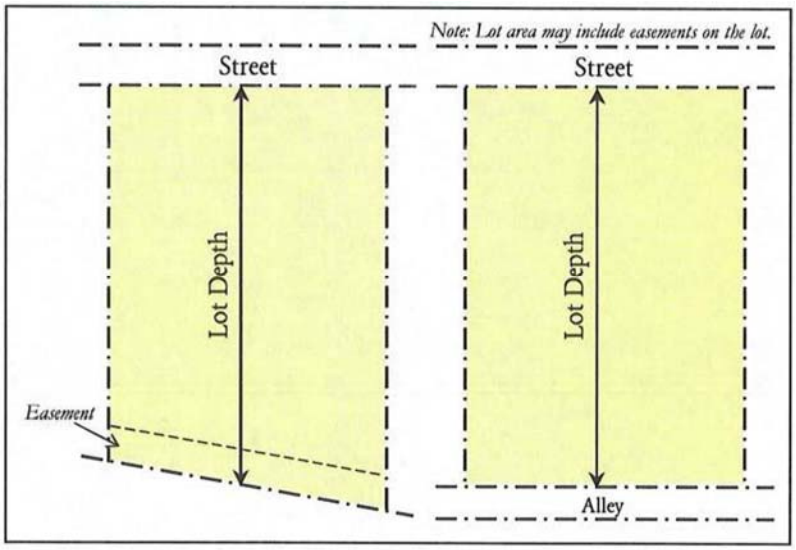


Illustration 50-2-5: Lot depth



Lot depth means the mean horizontal distance between the front and rear lot lines. See Illustration 50-2-5.

Lot, double frontage, means a lot having frontage upon two nonintersecting streets, as distinguished from a corner lot. See Illustration 50-2-4.

Lot, flag, means a lot having access to a street by means of a stem or a narrow strip of land connecting the lot to the street; the stem or narrow strip generally has a depth greater than its street frontage. See Illustration 50-2-4.

Lot frontage means that dimension of a lot or portion of a lot abutting onto a street.

Lot, interior, means a lot other than a corner lot. See Illustration 50-2-4.

Lot, key, means a corner lot whose exterior side is adjacent to the front yard of another lot.

Lot line means a line of record bounding a lot that divides one lot from another lot or from a public or private street or any other public space.

Lot of record means a lot which is part of a subdivision, the plat of which has been recorded in the office of the county clerk of either county, as applicable, or a parcel of land, the deed for which was recorded in the office of the county clerk prior to date of adoption of the ordinance from which this chapter is derived.

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Lot width means the horizontal distance between the side lines of a lot measured parallel to the front lot line at the minimum required building setback line. See Illustrations 50-2-6 and 50-2-7.

Illustration 50-2-6: Lot width

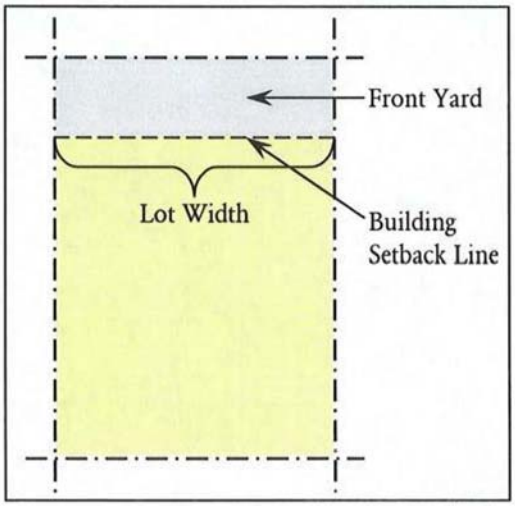
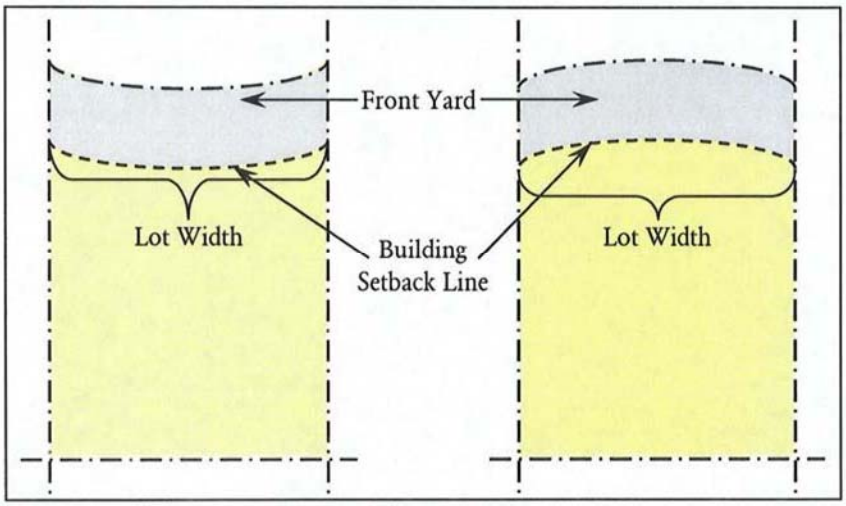


Illustration 50-2-7: How to calculate lot width on curved lots



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Main building means the building on a lot which is occupied by the primary use.

Manufactured home display or sales (new or used) means the offering for sale, storage, or display of new or previously owned (i.e., used) manufactured housing units (e.g., mobile homes/trailers, HUD-code homes, industrialized homes) on a parcel of land, but excluding the use of such facilities as dwellings either on a temporary or permanent basis.

Manufactured housing means any one of three types of prefabricated housing products which are typically manufactured/assembled at a location other than the end user's permanent site, and which are regulated by the Texas Manufactured Housing Standards Act (Vernon's Ann. Civ. St. arts. 5221f and 5221f-1). For the purpose of this chapter, there are three types of manufactured homes:

HUD-Code manufactured home or *manufactured home* means a movable dwelling designed to be transported on the highway (either intact or in major sections) by a prime mover, which can be used as a residential dwelling either with or without a permanent foundation. The term "HUD-Code manufactured home" is also defined as a movable manufactured home that was constructed after June 15, 1976.

*Industrialized home (*also called *modular prefabricated structure or modular home)* means a structure or building module as defined under the jurisdiction and control of the state department of labor and standards, that is transportable in one or more sections on a temporary chassis or other conveyance device, and that is designed to be installed and used by a consumer as a fixed residence on a permanent foundation system. The term "industrialized home" includes the plumbing, heating, air-conditioning and electrical systems contained in the structure. The term "industrialized home" does not include mobile homes or HUD-Code manufactured homes as defined in V.T.C.A., Occupations Code § 1201.003.

Mobile home means a movable dwelling designed to be transported on its own chassis on the highway (either intact or in major sections) by a prime mover, which is constructed with a base section so as to be independently self-supporting, and which does not require a permanent foundation for year-round living. The term "mobile home" is also defined as any manufactured home that was constructed prior to June 15, 1976.

Mausoleum means property used for the interring of the dead and where bodies are interred above ground in staked vaults.

Medical facilities includes any of the following:

Dental office or doctor's office means same as medical clinic.

Hospital means an institution providing health services primarily for human inpatient medical or surgical care for the sick or injured and including related facilities such as laboratories, outpatient departments, training facilities, central services facilities, and staff offices which are an integral part of the facilities.

Massage establishment means any place of business in which massage therapy is practiced by a massage therapist, as defined and licensed by state law. The term "massage therapy," as a health care service, means the manipulation of soft tissue for therapeutic purposes. The term "massage establishment" includes, but is not limited to, effleurage (stroking), petrissage (kneading), tapotement (percussion), compression, vibration, friction, nerve strokes, and Swedish gymnastics, either by hand or with mechanical or electrical apparatus for the purpose of body message. The term "massage therapy" may include the use of oil, salt glows, heat lamps, hot and cold packs, tub, shower or cabinet baths. Equivalent terms for "massage therapy" are massage and therapeutic massage. The terms "massage" and "therapeutic" do not include diagnosis, the treatment of illness or disease, or any service or procedure for which a license to practice medicine, chiropractic, physical therapy, or podiatry is required by law.

Medical clinic or office means a facility or group of offices for one or more physicians for the examination and treatment of ill and afflicted human outpatients provided that patients are not kept overnight except under emergency conditions.

Medical laboratory means an indoor establishment that includes laboratories and/or experimental equipment for medical testing, prototype design and development, and product testing.

Public health center means a facility primarily utilized by a health unit for providing public health services including related facilities such as laboratories, clinics and administrative offices operated in connection therewith.

Sanitarium means an institution providing health facilities for inpatient medical treatment or treatment and recuperation making use of natural therapeutic agents.

Surgical out-patient facility means an establishment offering any type of surgical procedures and related care which, in the opinion of the attending physician, can be performed safely without requiring inpatient overnight hospital care and exclusive of such surgical and related care as licensed physicians ordinarily may elect to perform in their private offices.

Manufactured/mobile home park means a parcel of land not less than three acres nor greater than 35 acres which is designed, improved, or intended to be used for short- or long-term occupancy by manufactured or mobile homes in designated spaces. The facility may include a residence for the owner/manager of the premises, utility hookups, accessory structures, playgrounds and open space areas, fenced yard areas for pets, and other similar amenities.

Manufactured/mobile home space means a plot of ground within a manufactured/mobile home park, or manufactured/mobile home subdivision which is designed for the accommodation of one manufactured/mobile home, trailer or RV unit.

Manufactured/mobile home subdivision means a parcel of land which is designed, platted, improved and intended for the long-term placement of individually owned manufactured/mobile home units or HUD-code manufactured homes on platted lots which can be purchased outright by the owners of the manufactured/mobile home units. The facility may include a residence for the owner/manager of the premises, utility hookups, accessory structures, playgrounds and open space areas, fenced yard areas for pets, and other similar amenities.

Mini-warehouse/self-storage means small, individual, storage units for rent or lease, restricted solely to the storage of items. The conduct of sales, business or any other activity within the individual storage units, other than storage, shall be prohibited.

Minimum floor area per dwelling unit means the minimum floor area per dwelling unit, as specified in each residential zoning district category, defined as the total square feet of floor space within a residential structure's exterior walls that is heated and/or air conditioned including the livable area, closets and storage but excluding breezeways, garages, open porches, carports and accessory buildings.

Model home means a dwelling in a developing subdivision, located on a legal lot of record that is limited to temporary use as a sales office for the subdivision and to provide an example of the dwellings which have been built or which are proposed to be built within the same subdivision.

Motor freight company means a company using trucks or other heavy load vehicles to transport goods, equipment and similar products. The term "motor freight company" includes companies that move residential or commercial belongings.

Motor vehicle means any vehicle designed to carry one or more persons which is propelled or drawn by mechanical power, such as automobiles, vans, trucks, motorcycles and buses.

Motorcycle means a usually two-wheeled, self-propelled vehicle having one or two saddles or seats, and which may have a sidecar attached. Motorbikes, all-terrain vehicles (ATVs), motor scooters, mopeds and similar vehicles are classified as motorcycles.

Motorcycle sales/dealer means the display, sale and/or servicing, including repair work, of motorcycles.

Municipal facility or use means any area, land, building, structure and/or facility which is owned, used, leased or operated by the city, including police and fire department facilities.

Nonconforming use means a building, structure, or use of land lawfully occupied as of the effective date of this chapter or amendments thereto, but which does not conform to the use regulations of the district in which it is situated.

Nursery means an establishment, including a building, part of a building or open space, for the growth, display and/or sale of plants, shrubs, trees and other materials used in indoor or outdoor planting.

Occupancy means the use or intended use of the land or buildings by proprietors or tenants.

Office showroom/warehouse means an establishment with no more than 25 percent of its total floor area devoted to storage and warehousing, but not accessible to the general public. The remaining area may include retail and wholesale sales areas, sales offices, and display areas for products sold and distributed from the storage and warehousing areas.

Offices, professional and general business, means a room or group of rooms used for the provision of executive, management and/or administrative services. Typical uses include administrative offices and services including real estate, insurance, property management, investment, legal, personnel, travel, secretarial services, medical, dental, telephone answering, and business offices of public utilities, organizations and associations, but excluding medical offices.

Officially approved place of access means access to a property, other than from a dedicated street, which is approved by the city.

Outdoor sales means any primary use of a premises whereon goods, materials, or merchandise is displayed for the purpose of sale, and which the display area is greater than 30 percent of the gross floor area of the principal building.

Outside storage means the permanent and/or continuous keeping, displaying or storing, outside a building, of any goods, materials, merchandise or equipment on a lot or tract for more than 24 hours. Outside storage is also referred to as open storage.

Paint shop means a commercial establishment where painting services are performed but not automotive-related painting services, which would be included under auto repair (major).

Parcel means any unplatted tract of land or any portion of an unplatted tract of land (see *Tract).*

Park or playground (private) means a recreation facility, park or playground which is not owned by a public agency such as the city or school district, and which is operated for the exclusive use of private residents or neighborhood groups and their guests and not for use by the general public.

Park or playground (public, municipal) means publicly owned and operated parks, recreation areas, playgrounds, swimming pools and open spaces that are available for use by the general public without membership or affiliation. This land use shall include special event type uses such as rodeos, concerts, festivals and other special events requiring special event permits, as set forth in this Code.

Parking lot means an off-street (i.e., not on a public street or alley), ground level area, paved in accordance with city parking lot standards, for the short- or long-term storage of motor vehicles.

Parking lot or *garage for passenger cars and trucks of less than one-ton capacity* means an area or structure devoted to the parking or storage of cars and trucks of less than one-ton capacity for a fee which may include, in the case of a parking structure only, a facility for servicing automobiles provided that such facility is an internal function for use only by automobiles occupying the structure.

Parking space means an area meeting the dimensional requirements prescribed by this chapter, paved with a concrete or asphalt surface together with a concrete or asphalt surfaced driveway connecting the parking space with a street or alley permitting free ingress and egress. The space shall not be located within a public street or alley, nor shall head-in parking adjacent to a public street or alley, wherein the maneuvering is done on a public street or alley, be classified as off-street parking in computing the parking requirements for any use.

Pawn shop means an establishment where money is loaned on the security of personal property pledged in the keeping of the owners (pawnbroker). Retail sales of primarily used (i.e., pre-owned) items is also allowed, provided that the sale of such items complies with local, state and federal regulations.

Pet and animal grooming shop means a retail establishment offering small animals, fish and/or birds for sale as pets, where such creatures are housed within the building, and which may include the grooming of dogs, cats and similar animals.

Petroleum distribution/storage means a facility for the long-term storage and distribution of petroleum that may also involve wholesale sales, but not retail sales, of petroleum and petroleum-based products. No manufacturing or refining of petroleum or petroleum-based products occurs on the premises, only storage and/or distribution functions.

Planned development district means planned associations of uses developed as integral land use units, such as industrial parks or industrial districts, offices, commercial or service centers, shopping centers, residential developments of multiple or mixed housing, including attached single-family dwellings or any appropriate combination of uses which may be planned, developed or operated as integral land use units either by a single owner or by a combination of owners.

Planning director means the person designated by the city manager to administer this chapter.

Planning and zoning commission means a board which is appointed by the city council as an advisory body, and which is authorized to recommend changes in the zoning of property and other planning functions as delegated by the city council. Planning and zoning commission is also referred to as the commission.

Plat means a plan showing the subdivision of land, creating building lots or tracts, showing all essential dimensions and other information in compliance with the subdivision standards of the city, and which is approved by the city and recorded in the plat records of either county.

Platted lot. See *Lot* and *Lot of record.*

Playfield or stadium (private) means an athletic field or stadium owned and operated by an agency other than the city or the school district.

Premises means land together with any buildings or structures situated thereon.

Primary use means the principal or predominant use of any lot or building.

Principal building. See *Main building.*

Private club means an establishment providing social and/or dining facilities which may provide alcoholic beverage service, to an association of persons, and otherwise falling within the definition of, and permitted under the provisions of, V.T.C.A., Alcoholic Beverage Code title 3, ch. 32, as the same may be hereafter amended, and as it pertains to the operation of private clubs.

Professional service means work performed which is commonly identified as a profession, and which may be licensed by the state.

Propane sales means retail sales of gaseous substances commonly used for household purposes such as propane and/or butane; the term "propane sales" does not include the storage, sale or distribution of other types of combustible substances or alternative fuels such as containerized natural gas, liquid propane, etc.

Public agency building, shop, yard or facility means any building, land, area and/or facility (including maintenance/storage yards and shops) which is owned, leased, primarily used and/or occupied by any subdivision or agency of the following: the state, the United States, or other public utility or agency. Any facility which is owned, leased, used and/or occupied by the city, either county, the federal government, or other recognized political subdivision or public agency.

Public view means areas that can be seen from any public street.

Rear yard. See *Yard, rear.*

Recreation center means a place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities.

Recreational vehicle (RV) means a self-propelled (i.e., motorized), mobile living unit which is typically used for temporary human occupancy away from the users' permanent place of residence.

Recreational vehicle/camper sales and leasing means an establishment that sells, leases and/or rents new and/or used recreational vehicles, travel trailers, campers, boats/watercraft, and similar types of vehicles.

Recreational vehicle (RV) park/campground means an area or commercial campground for users of recreational vehicles, travel trailers, and similar vehicles to reside, park, rent or lease. A parcel of land not less than three acres nor greater than 35 acres which is designed, improved, or intended to be used for short- or long-term occupancy by recreational vehicles (including travel trailers) in designated spaces. The facility must be developed in accordance with definition as adopted and may include a residence for the owner/manager of the premises, utility hookups, accessory structures, playgrounds and open space areas, fenced yard areas for pets, and other similar amenities.

Rehabilitation care facility (halfway house) means a dwelling unit which provides residence and care to not more than nine persons regardless of legal relationship who have demonstrated a tendency towards alcoholism, drug abuse, mental illness, or antisocial or criminal conduct living together with not more than two supervisory personnel as a single housekeeping unit.

Rehabilitation care institution (business) means a facility which provides residence and care to ten or more persons, regardless of legal relationship, who have demonstrated a tendency toward alcoholism, drug abuse, mental illness, or antisocial or criminal conduct together with supervisory personnel.

Residence means the same as a dwelling; also, when used with district, the term "residence" means an area of residential regulations.

Residential district means a district where the primary purpose is residential use.

Residential use means a dwelling unit or group of dwelling units; the term "residential use" includes dwelling units within the second story of a building wherein other parts of the building are used for a nonresidential purpose, such as a retail establishment or office.

Retail or service, incidental, means the rendering of incidental retailing or services incidental to the primary use. In the O Office District, for example, such uses may include a barbershop, beauty shop, smoke shop, news stand, candy counter, restaurant, pharmacy or other incidental activity secondary to the primary office occupancy. The term "incidental uses" shall mean uses which occupy less than 15 percent of the main use.

*Retirement housing for the elderly, (*also *independent living center or congregate housing,)* means a development providing self-contained dwelling units specifically designed for the needs of the elderly. Units may be rented or owner-occupied. To qualify as retirement housing, a minimum of 80 percent of the total units shall have a household head 55 years of age or greater. No long-term or permanent skilled nursing care or related services are provided.

Room means a building or portion of a building which is arranged, occupied or intended to be occupied as living or sleeping quarters, but not including toilet or cooking facilities.

Salvage storage yard (see *wrecking yard*) means the reclamation and storage of used products or materials.

Sand, gravel or stone storage (including sales) means the process of storing and/or selling sand, gravel, stone, topsoil, compost or other products from the earth.

Sexually oriented business means as provided in chapter 6, article II.

School—Business means a for-profit business that offers instruction and training in a profession, service or art such as a secretarial or court reporting school, barber/beauty college or commercial art school, but not including commercial trade schools.

School—Commercial trade (vocational) means a for-profit business that offers vocational instruction and training in trades such as welding, brick laying, machinery operation/repair, and similar trades.

School—Other than public or denominational means a school under the sponsorship of a private agency or corporation, other than a public or religious agency, which offers a curriculum that is generally equivalent to public elementary and/or secondary schools.

School—Public or denominational means a school under the sponsorship of a public or religious agency which provides elementary and/or secondary curricula, but not including private business or commercial trade schools.

Scientific and industrial research laboratories means facilities for research, including laboratories, experimental equipment, and operations involving compounding or testing of materials (hazardous or nonhazardous) or equipment.

Screened means shielded, concealed, and effectively hidden from the view of a person standing at ground level on an abutting site, or outside the area or feature so screened, by a fence, wall, hedge, berm or similar architectural or landscape feature.

Screening means any method of visually shielding or obscuring one land use from another by the planting of evergreen trees or shrubs, or both, or the erection of a screening fence designed to minimize the transmission or propagation of noise, light, vibration, or dust from traffic or other activity on one property to adjoining public or private properties. The term "screening" shall meet minimum requirements to provide a year-round visual obstruction.

Seasonal uses includes the sales of items such as Christmas trees, pumpkins, snow cones, fresh produce, and other items which are typically only available at certain times of the year.

Servant's quarters or *guest house* means an accessory dwelling in a residential district for the sole use and occupancy of a member of the immediate family or of a person or persons employed on the premises by the occupant on a full-time basis as domestic help such as a maid, nanny/governess, groundskeeper, chauffeur, cook or gardener, but not involving the rental of such facilities or the use of separate utility connections for such facilities.

Sheltered care facility means a nonprofit or for-profit boardinghome for the sheltered care of persons with special needs, which, in addition to providing food and shelter, may also provide some combination of personal care, social or counseling services, and transportation.

Shopping center means a group of primarily retail and service commercial establishments that is planned, constructed and managed as a total entity, and which provides customer and employee parking on site, unloading/delivery areas which are separated from customer access, and aesthetically appropriate design and protection from the elements.

Side yard. See *Yard, side.*

Skilled nursing facility means a facility providing primarily inpatient health care, personal care, or rehabilitative services over a long period of time to persons who are chronically ill, aged or disabled and who need ongoing health supervision but not hospitalization. A skilled nursing facility is also referred to as a nursing home, convalescent home, or a long-term care facility.

Small engine repair shop means a shop for the repair of lawn mowers, chainsaws, lawn equipment, and other machines with one-cylinder engines.

Stable, commercial, means a stable used for the rental of stall space or for the sale or rental of horses or mules.

Stables (private, principal or accessory use) means an area used solely for the owner's private purposes for the keeping of horses, mules or ponies which are not kept for remuneration, hire or sale.

Storage or wholesale warehouse means a building used primarily for the storage of goods and materials.

Story means that portion of a building (above grade), other than a basement, that is included between the surface of any floor and the surface of the next floor above it or, if there is no floor above it, then the space between the floor and the ceiling above it. The height for the first story shall be considered to be 15 feet in height, and the height of the second story and other subsequent stories shall be

considered to be 12 feet in height. The term "story" does not include parapets, gables and other normal roof structures. In cases where the site has a significant slope, the height of a building shall be measured from a point representing the average slope from opposite sides of the building.

Story, half means a space under a sloping roof which has the line of intersection of roof decking and wall face not more than three feet above the top floor level, and in which space not more than two-thirds of the floor area is finished off for use. A half-story containing an independent apartment or self-contained living quarters shall be counted as a full story.

Street means any dedicated public or private thoroughfare (right-of-way), which affords the principal means of access to abutting property. A public street is termed a major thoroughfare or arterial when the right-of-way is greater than 60 feet.

Street intersection means any street which joins another street at an angle, whether or not it crosses the other.

Structural alterations means any change in the supporting members of a building, such as load-bearing walls or partitions, columns, beams or girders, or any substantial change in the roof or in the exterior walls.

Structure means anything constructed or erected, the use of which requires location on the ground or which is attached to something having a location on the ground (see *Building*).

Studio for radio and/or television means a building or portion of a building used as a place for radio or television broadcasting.

Swimming pool, commercial, means a swimming pool with accessory facilities which is not part of the municipal or public recreational system and which is not a private swim club, but where the facilities are available for use by the general public for a fee.

Swimming pool, private (use by membership) means a swimming pool constructed for the exclusive use of the residents of a one-family, two-family or multiple-family dwelling and located, fenced and built in accordance with this Code. A private swimming pool shall not be operated as a business nor maintained in a manner to be hazardous or obnoxious to adjacent property owners.

Tattoo or body piercing studio means a building or portion of a building used for selling and/or applying tattoos (by injecting dyes/inks into the skin), and/or for piercing the skin with needles, jewelry or other paraphernalia, primarily for the purpose of ornamentation of the human body.

Telemarketing center means an establishment which solicits business or the purchase of goods and/or services by telephone only. No sale of goods or services to the public occurs at or on the premises. No products are stored at or on the premises.

Telephone and exchange/switching station means a line for the transmission of telephone signals and a central office in which telephone lines are connected to permit communication but not including a business office, storage (inside or outside) or repair yards.

Temporary means used or lasting for only a limited period of time; not permanent.

Temporary building means any nonresidential prefabricated structure which is not originally manufactured or constructed at its use site, required on-site installation of utilities and/or foundation.

Temporary field office or *construction yard or office* means a structure or shelter used in connection with a development or building project for housing on the site of temporary administrative and supervisory functions and for sheltering employees and equipment. Temporary permits for one year for a specific time and location as determined may be issued by the building official and shall be subject to review and renewal for reasonable cause.

Temporary real estate field office means a building, structure, or portable trailer used temporarily for sales of residential units in a recorded subdivision or development with a residential use component and in which sales and construction of residential units is planned and underway.

Tennis court (private/not lighted) means a surface designed and constructed for playing the game of tennis along with all fencing, nets and related appurtenances but excluding lighting for nighttime play in residential areas except as may be otherwise provided or restricted by the conditional use permit.

Theater, drive-in (outdoor) means an open lot with its appurtenant facilities devoted primarily to the showing of motion pictures or theatrical productions on a paid admission basis to patrons seated in automobiles.

Theater or *playhouse (indoor)* means a building or part of a building devoted to the showing of motion pictures, or for dramatic, musical or live performances.

Tire sales (indoors, no outside storage) means a retail establishment engaged in the sale and/or installation of tires for vehicles, but without outside storage.

Tire sales (outdoors, with outside storage) means a retail establishment engaged in the sale and/or installation of tires for vehicles, with outside storage.

Tool and machinery rental means a building or a portion of a building used for the display and rental of tools, machinery and instruments and that may have outdoor storage.

Tract means a single individual parcel or lot.

Tractor sales. See *Heavy machinery sales and storage.*

Trade and commercial schools. See *School commercial trade.*

Trailer, hauling means a vehicle or device which is pulled behind an automobile or truck and which is designed for hauling animals, produce, goods or commodities, including boats.

Trailer home. See *Recreational vehicle.*

Trailer park or court. See *Recreational vehicle park.*

Trailer space. See *Recreational vehicle park.*

Trailer, travel or *camping,* means a portable or mobile living unit which is used for temporary human occupancy away from the users' permanent place of residence, which does not constitute the users' principal place of residence, and which is designed to be towed behind another vehicle.

Transit terminal means any premises for the transient housing and/or parking of motor-driven buses and the loading and unloading of passengers.

Transportation and utility structures/facilities means permanent facilities and structures operated by companies engaged in providing transportation and utility services, including, but not limited to, railroad track rights-of-way, sewage pumping stations, telephone exchanges, transit station turnarounds, water reservoirs and water pumping stations.

Truck means a light or heavy load vehicle (see *light load vehicle* and *heavy load vehicle*).

Truck and bus repair means an establishment providing major and minor automotive repair services to heavy load vehicles.

Truck and bus leasing means the rental of new or used panel trucks, vans, trailers, recreational vehicles or motor-driven buses in operable condition and where no repair work or intensive cleaning operations are performed.

Truck stop means a facility for the parking, refueling and/or minor repair of heavy load tractor-trailer trucks. These facilities may also include retail sales of food and/or other items, restaurants, restroom/showers facilities, and/or temporary sleeping quarters.

Truck terminal means an area and building where cargo is stored and where trucks, including tractor and trailer units, load and unload cargo on a regular basis. The term "truck terminal" may include facilities for the temporary storage of loads prior to shipment.

Truck sales and services (heavy trucks) means the display, sale or rental of new or used heavy load vehicles in operable condition.

Use means the purpose for which land or buildings are or may be occupied in a zoning district.

Utility distribution/transmission lines means facilities which serve to distribute and transmit electrical power, gas and water, including, but not limited to, electrical transmission lines, gas transmission lines, telephone lines and metering stations, whether operated by the city or private utility company.

Variance means an adjustment in the application of the specific regulations of this chapter to a particular parcel of property which, because of special conditions or circumstances of hardship peculiar to the particular parcel, is necessary to prevent the property from being deprived of rights and privileges enjoyed by other parcels in the same vicinity and zoning district. Only the board of adjustments can grant a variance.

Veterinarian clinic means an establishment where animals and pets are admitted for examination and medical treatment and that may have indoor and/or outdoor kennels or pens (see *kennels*).

Wrecking materials yard (junkyard or *auto salvage)* means any lot upon which two or more motor vehicles of any kind, which are incapable of being operated due to condition or lack of license, have been placed for the purpose of obtaining parts for recycling or resale.

Yard means an open space at grade between the principal buildings and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except where otherwise specifically provided in this chapter. See Illustration 50-2-2.

Yard, front, means the open (unoccupied, unobstructed) space located in front of the front elevation of the principal buildings, calculated as the minimum horizontal distance between the front property line and the front elevation of the principal buildings. See Illustration 50-2-2.

Yard, rear, means the open (unoccupied, unobstructed) space located behind the rear elevation of the principal buildings, calculated as the minimum horizontal distance between the rear property line and the rear elevation of the principal buildings. See Illustration 50-2-2.

Yard, side, means the open (unoccupied, unobstructed) space located on either side of the principal buildings, calculated as the minimum horizontal distance between the side property line and the side elevation of the principal buildings. See Illustration 50-2-2.

Zoning district means a classification applied to any certain land area within the city stipulating the limitations and requirements of land usage and development.

Zoning district map means the official map upon which the boundaries of the various zoning districts are drawn and which is an integral part of this zoning chapter. (See sections 50-63 and 50-64.)

(Ord. No. 2008-01, § 45, 2-4-2008; Ord. No. 2010-09, § 4, 5-3-2010; Ord. No. 2012-01, § 2, 2-20-2012; Ord. No. 2013-19, § 3, 11-4-2013)

Sec. 50-3. Effect of interpretation.

In interpreting and applying the provisions of this chapter, they shall be held to the minimum requirements for the promotion of the public safety, health, convenience, comfort, prosperity, or general welfare. It is not intended by this chapter to interfere with or abrogate or annul any easements, covenants or other agreements between parties; provided, however, that where this chapter imposes a greater restriction upon the use of buildings or premises or upon the height of buildings, or requires larger open spaces than are imposed or required by agreements, the provisions of this chapter shall govern. This chapter is also not intended to abrogate or annul any lawfully obtained permit issued prior to the effective date of the ordinance from which this chapter is derived.

(Ord. No. 2008-01, § 46, 2-4-2008)

Sec. 50-4. Preserving rights in pending litigation and violations under existing ordinances.

By the passage of the ordinance from which this chapter is derived, no presently illegal use shall be deemed to have been legalized unless such use specifically falls within a use district where the actual use is a conforming use. Otherwise, such uses shall remain nonconforming uses where recognized, or an illegal use, as the case may be. It is further the intent and declared purpose of the ordinance from which this chapter is derived that no offense committed, and no liability, penalty or forfeiture, either civil or criminal, incurred prior to the time this chapter was adopted, shall be discharged or affected by adoption of the ordinance from which this chapter is derived; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures may be instituted or causes presently pending proceeded with in all respects.

(Ord. No. 2008-01, § 47, 2-4-2008)

Sec. 50-5. Penalty for violations.

(a) Any person or corporation who shall intentionally, knowingly, recklessly, or with criminal negligence violate any of the provisions of this chapter shall, upon conviction, be fined any sum not exceeding $2,000.00 and each and every day that the provisions of this chapter are violated shall constitute a separate and distinct offense. In addition to the said penalty provided for, the right is hereby conferred and extended upon any property owner owning property in any district, where such property owner may be affected or invaded, by a violation of the terms of the chapter, to bring suit in such court having jurisdiction thereof and obtain such remedies as may be available at law and equity in the protection of the rights of such property owners.

(b) Nothing contained in this chapter shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.

(Ord. No. 2008-01, § 49, 2-4-2008)

Sec. 50-6. Validity.

If any section, paragraph, subdivision, clause, phrase, or provision of this chapter shall be adjudged invalid or held unconstitutional, the same shall not affect the validity of this chapter as a whole or any part or provision thereof other than the part so decided to be invalid or unconstitutional.

(Ord. No. 2008-01, § 50, 2-4-2008)

Secs. 50-7—50-30. Reserved.

ARTICLE II. ADMINISTRATION

Sec. 50-31. Nonconforming uses and structures.

Sec. 50-32. Planning and zoning commission.

Sec. 50-33. Board of adjustments (BOA).

Sec. 50-34. Amendments to zoning chapter and districts, administrative procedures, and enforcement.

Sec. 50-35. Building permits; certificates of occupancy and compliance.

Sec. 50-36. Submission and review of concept plans, building permit plans and site plans.

Sec. 50-37. Vested rights and review procedure.

Secs. 50-38—50-62. Reserved.

Sec. 50-31. Nonconforming uses and structures.

(a) *Nonconforming uses.*

(1) Any lawful use of property existing at the time of passage of the ordinance from which this chapter is derived that does not conform to the regulations prescribed in article III of this chapter shall be deemed a legal nonconforming use.

(2) If no structural alterations (except those required by law or ordinance) are made, a nonconforming use may be extended throughout a building. A nonconforming use of a building may be changed to another nonconforming use of the same or more restrictive zoning classification, provided no structural alterations are made. In the event that a nonconforming use of a building is changed to a nonconforming use of a higher or more restrictive zoning classification, it shall not later be reverted to a use in the former lower or less restrictive zoning classification.

(3) The right of a nonconforming use to continue shall be subject to such regulations as to the maintenance of the premises and conditions of operation as may, in the judgment of the board of adjustments, be reasonably required for the protection of adjacent property.

(b) *Nonconforming structures.*

(1) A nonconforming structure may continue to be occupied and may be enlarged, repaired, or altered, provided such does not create an additional nonconformity or increase the degree of existing nonconformity with respect to maximum building height or minimum yard requirements. No alteration or enlargement shall extend further into the required yard than the existing nonconforming portion of the building. This provision shall apply separately to each yard requirement with which the existing structure does not comply.

(2) If 50 percent or more of the improvement's appraised value, as determined by the county appraisal district, of a nonconforming structure is destroyed by fire, the elements, or some other cause, then the structure may be rebuilt only in conformity with the provisions of this chapter.

(3) If less than 50 percent of the improvement's appraised value, as determined by the county appraisal district, of a nonconforming structure is destroyed by fire, the elements, or some other cause, then the structure may be reconstructed as it was before the partial destruction but only to its original dimensions and floor area, and provided that such reconstruction is completed within one year (i.e., 365 calendar days) following the event that caused the partial destruction. If reconstruction is delayed by contested insurance claims, litigation, or some other similar cause, then the one-year reconstruction period may be extended by the board of adjustments.

(4) If a nonconforming structure that is totally or partially destroyed was occupied by a nonconforming use at the time of such destruction, then the nonconforming use may not be re-established without specific authorization by the board of adjustments. (See section 50-33).

(5) Any conforming structure that is totally or partially destroyed shall be reconstructed only in conformity with the provisions of this chapter.

(6) Nothing in this chapter shall be construed to prohibit the upgrading, strengthening, repair or maintenance of any part of any structure, conforming or nonconforming, that is declared unsafe or uninhabitable by the proper authority, unless such repairs or maintenance exceeds 50 percent of the structure's appraised value, as determined by the county appraisal district.

(c) *Abandonment of nonconforming uses and structures, and cessation of use of structure or land.*

(1) If a nonconforming use or structure is abandoned, any future use of the premises shall be in conformity with the provisions of this chapter, as amended, and with any other applicable city

codes or ordinances that are in effect at the time the use is resumed or the structure is re-occupied.

(2) A nonconforming use or structure shall be deemed abandoned in the following circumstances:

a. The use ceases to operate for a continuous period of 180 calendar days;

b. The structure remains vacant for a continuous period of 180 calendar days with all or some of the utilities disconnected, or if utility payments are delinquent;

c. In the case of a temporary use, the use is moved from the premises for any length of time; or

d. A nonconforming use or structure shall not be deemed abandoned for a period of up to one year on properties that are for sale or lease, provided the owner is actively promoting the sale or lease and there is evidence of continual use of signs, advertising or listings.

(3) Normal cessation of a use, or temporary discontinuance for purposes of maintenance and rebuilding after damage or destruction, as provided in this section, shall not be included in calculating the period of discontinuance.

(4) If the use of any lot, tract or property that does not have a building on it and that is used for open/outside storage as of the effective date of the ordinance from which this chapter is derived (or amendment thereto) is made nonconforming by this chapter (or amendment thereto), then such storage use shall cease within 180 calendar days following the effective date of the ordinance from which this chapter is derived (or amendment thereto). The lot, tract or property shall be cleaned and all trash, debris, stored items and vehicles, and other materials shall be removed from the premises such that the property is not a physical or visual nuisance to the public or to surrounding property owners.

(d) *Moving of nonconforming structure.* No nonconforming structure or building shall be moved in whole or in part to any other location on the lot, or to any other location or lot, unless every portion of such structure is in compliance with all the regulations of the zoning district wherein the structure is to be relocated. Such building relocation shall also require a structure relocation permit from the city, and may also require platting of the intended building site pursuant to chapter 40, pertaining to subdivisions, as well as any approval processes required by this chapter.

(e) *Right to proceed preserved.* Nothing contained in this section is intended to alter any rights that may have accrued to proceed under prior regulations, pursuant to V.T.C.A., Local Government Code § 43.002 or 245.001 to 245.006.

(Ord. No. 2008-01, § 7, 2-4-2008)

Sec. 50-32. Planning and zoning commission.

(a) *Generally.* The planning and zoning commission (also referred to as the commission) shall function according to the criteria this section that establish membership and operating procedures.

(b) *Powers and duties.*

(1) The commission shall have all the rights, powers, privileges and authority authorized and granted by the city council and through the state authorizing and granting cities the power of zoning and subdivision regulation as found in V.T.C.A., Local Government Code chs. 211, 212.

(2) The commission shall be an advisory body and adjunct to the city council, and shall make recommendations regarding amendments to the comprehensive plan, changes of zoning, zoning ordinance amendments, and zoning to be given to newly annexed areas, and shall consider approval of plats of subdivisions as may be submitted to it for review and other planning-related matters. The commission shall conduct an annual review of the city's comprehensive plan and shall be prepared to make recommendations to the city council as deemed necessary to keep the city's comprehensive plan current with changing conditions and

trends and with the planning needs of the city. The commission shall also serve in an advisory capacity on any planning related items in the city and perform other duties as provided for by the city Charter.

(c) *Created; membership; officers; rules and bylaws*:

(1) There is created, in accordance with V.T.C.A., Local Government Code ch. 211, the planning and zoning commission, hereafter sometimes referred to as the commission, which shall consist of five people residing within the city limits.

(2) Members shall be appointed by the city council.

(3) All appointments to the commission shall serve as a member of the commission for a term of office of three years. Members may be reappointed with no limitation on the number of terms one member may serve. Upon adoption of the ordinance from which this chapter is derived, the city council appoints the city planning commission members to serve as the planning and zoning commission.

(4) Any vacancies on the commission shall be filled via appointment by a simple majority vote of the city council.

(5) Members of the planning and zoning commission may be removed from office at any time by a simple majority vote of the full city council either upon its own motion or upon recommendation of the commission. Failure to attend three consecutive scheduled meetings shall be deemed as neglect and cause for removal from office, unless such absences were due to unusual circumstances beyond the member's control, such as sickness of the member or someone within the member's immediate family, or if the commission or the city council approves the absences as excused. A vote to remove a commission member shall be placed on the appropriate agenda as a regular item, and shall be voted upon accordingly.

(6) The members of the commission shall regularly attend meetings and public hearings of the commission, shall serve without compensation, and shall not hold any other office within, or serve as an employee of, the city while serving on the commission. The commission shall meet a minimum of once per month at a time established by the city council. If there have been no applications filed for review by the commission, the city secretary shall notify the chairperson and no meeting shall be required for that month.

(7) The commission shall elect a chairperson and a vice-chairperson from among the commission membership, and each officer shall hold office for one year or until replaced by a simple majority vote of the full commission. The city manager's designee shall serve as secretary to the commission, and shall keep minutes of all meetings held by the commission as well as the full record of all recommendations made by the commission to the city council.

(8) The commission shall have the power to make rules, regulations and bylaws for its own governance, which shall conform with those set forth by the city council, and such rules, regulations and bylaws shall be subject to approval by the city council. Such rules and bylaws shall include, among other items, provisions for the following:

a. Regular and special meetings, open to the public;

b. A record of its proceedings, to be open for inspection by the public;

c. Reporting to the city council and the public, from time to time and annually; and

d. Reviewing the comprehensive plan on a regular basis.

(d) *Parliamentary procedure; quorum; voting.* The commission will follow the parliamentary procedure adopted by the city council, and procedures shall not be in conflict with the laws applicable to the commission on the following:

(1) *Quorum.* A quorum shall consist of a majority of the membership of the commission, and any issue to be voted upon shall be resolved by a majority of those members present.

(2) *Voting.* All commission members, including the chairperson, shall be entitled to one vote each upon any question, a quorum being present. Voting procedures shall be in accordance with the parliamentary procedures adopted by the city council.

(3) *Conflict of interest.* If any member has a conflict of interest regarding any item on the commission's agenda, that member may remove himself from the room and shall refrain from discussing and/or voting only on the item for which a conflict exists. Refer to V.T.C.A., Local Government Code ch. 171, and any applicable city ethics policies or regulations.

(e) *Meetings; public record.*

(1) The planning and zoning commission shall meet in the municipal building or in some other specified location as may be designated by the presiding chairperson and at such intervals as may be necessary to orderly and properly transact the business of the commission but not less than once each month.

(2) Meetings shall be conducted in accordance with the Open Meetings Law (refer to V.T.C.A., Government Code ch. 551).

(f) *Procedure on zoning hearings.* The procedure and process for zoning changes or amendments shall be in accordance with section 50-34

(g) *Joint meetings with the city council.* Whenever the city council and the commission are required by the laws of the state to conduct public hearings in matters pertaining to planning, zoning or subdividing property, and at other times when it is in the best interest of the city to do so, the city council and the commission are hereby authorized, after published notice as required by law, to hold joint meetings and to conduct joint public hearings.

(Ord. No. 2008-01, § 8, 2-4-2008)

Sec. 50-33. Board of adjustments (BOA).

(a) *Creation.* There is hereby created a board of adjustments, hereafter sometimes referred to as the board, for the purpose, in appropriate cases and subject to appropriate conditions and safeguards, of making special exceptions and variances to the terms of this chapter that are consistent with the general purpose and intent of this chapter. The board shall be composed of members who are resident citizens of the city.

(b) *Members; terms of office.*

(1) The board of adjustments shall consist of five regular members, who shall be appointed by a simple majority vote of the full city council, and shall operate in accordance with V.T.C.A., Local Government Code §§ 211.008 through 211.011.

(2) The city council shall provide for the appointment of up to four alternate members to serve in the absence of one or more of the regular board members on an alternating basis such that all alternate members have equal opportunities to serve on the board. The planning director shall determine which alternate will serve if an alternate is needed.

(3) Regular board members and alternate members shall serve for a term of two years, and expiration of terms shall be staggered so that an overlapping of terms occurs (e.g., in any two-year period, the terms of two regular members and at least one alternate member shall expire during one of those years, and the terms of three regular members and at least one alternate member shall expire during the second year).

(4) Any vacancies on the board (both regular and alternate members) shall be filled for the unexpired terms via appointment by a simple majority vote of the full city council for the remainder of the terms.

(5) Members of the board may be removed from office for cause, and after a public hearing, by a simple majority vote of the full city council. Failure to attend three consecutive scheduled

meetings shall be deemed as neglect and cause for removal from office, unless such absences were due to unusual circumstances beyond the member's control such as sickness of the member or someone within the member's immediate family. Absences may be excused by the board or by the city council.

(6) The members of the board (and alternate members, as needed) shall regularly attend meetings and public hearings of the board, shall serve without compensation, and shall not hold any other office or position with the city while serving on the board.

(7) The board of adjustments shall elect a chairperson and a vice-chairperson from among its membership, and each officer shall hold office for two years or until replaced by a simple majority vote of the full board. The city manager's designee shall serve as secretary to the board of adjustments, and shall keep minutes of all meetings held by the board. The secretary shall also set up and maintain a separate file for each application for hearing by the board, and shall record therein the names and addresses of all persons/entities to whom notices are mailed, including the date of mailing and the person by whom such notices were delivered to the post office. All records and files provided for in this subsection shall be official records of the city. The secretary shall also immediately notify in writing the city council, planning and zoning commission, and the city building official of each decision rendered by the board in the conduct of its duties.

(8) The board of adjustments shall have the power to make the rules, regulations and bylaws for its own government, which shall conform as nearly as possible to those governing the city council and the provisions of this section. The board's rules, regulations and bylaws shall be subject to approval by city council.

(c) *Meetings.* Meetings of the board of adjustments shall be held at the call of the chairperson or planning director and at such other times as the board may determine. All meetings of the board shall be open to the public, and minutes shall be kept of all proceedings at board meetings. Four members of the board shall constitute a quorum for the conduct of business.

(d) *Authority.*

(1) The board of adjustments shall have the authority, subject to the standards established in V.T.C.A., Local Government Code §§ 211.008 through 211.011 and those established in this chapter, to exercise powers and to perform duties including the following:

a. Hear and decide an appeal that alleges error in an order, requirement, decision or determination made by an administrative official in the enforcement of this chapter;

b. Authorize, in specific cases, a variance or special exception (see section 50-33, subsections (f) and (g) of this section) from the terms of this chapter if the variance is not contrary to the public interest and if, due to special conditions, a literal enforcement of the chapter would result in unnecessary hardship, and so that the spirit of this chapter is observed and substantial justice is done; and

c. Make interpretations on zoning district boundaries shown on the zoning map where uncertainty exists because physical features on the ground differ from those on the zoning map or where the rules in section 50-64 do not apply or are ambiguous.

(2) In exercising its authority under subsection (d)(1)a of this section, the board of adjustments may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision or determination from which an appeal is taken and make the correct order, requirement, decision or determination, and for that purpose the board has the same authority as the city manager or his designee.

(3) The concurring vote of at least four members of the board of adjustments is necessary to:

a. Reverse an order, requirement, decision or determination of an administrative official;

b. Decide in favor of an applicant on a matter on which the board is required to review under this chapter;

c. Authorize a variance from a provision of this chapter; or

d. Hear and decide special exceptions to a provision of this chapter (see section 50-33 subsection (g) of this section).

(e) *Limitations on authority.*

(1) The board of adjustments may not grant a variance authorizing a use other than those permitted in the district for which the variance is sought, except as specifically provided for in this chapter.

(2) The board of adjustments shall have no power to grant or modify conditional use provisions authorized under section 50-81

(3) The board of adjustments shall have no power to grant a zoning amendment. In the event that a request for a zoning amendment is pending before the planning and zoning commission or the city council, the board shall neither hear nor grant any variances with respect to the subject property until final disposition of the zoning amendment by the commission and the city council.

(4) The board of adjustments shall not grant a variance for any parcel of property or portion thereof upon which a required site plan (refer to section 50-36), or any plat is pending on the agenda of the planning and zoning commission and/or the city council. All administrative and procedural remedies available to the applicant shall have been exhausted prior to hearing by the board of adjustments.

(f) *Variances.*

(1) *Defined.* A variance is the authority to depart from the application of areas, side yard, setback, height, and similar regulations to prevent unnecessary hardships.

(2) *Granting authority.* The board of adjustments may authorize a variance from these regulations when, in its opinion, undue hardship will result from requiring compliance. Variances may be granted only when in harmony with the general purpose and intent of this chapter so that the public health, safety and welfare may be secured and that substantial justice may be done.

a. In granting a variance, the board shall prescribe only conditions that it deems necessary for, or desirable to, the public interest.

b. In making the findings outlined in subsection (f)(3) of this section, the board shall take into account:

1. The nature of the proposed use of the land involved;

2. Existing uses of land in the vicinity;

3. The number of persons who will reside or work within the proposed use; and

4. The probable effect such variance will have upon traffic conditions and upon the public health, safety, convenience and welfare of the community.

(3) *Conditions required.* No variance shall be granted without first having given public notice and having held a public hearing on the variance request in accordance with section 50-33 subsection (c) of this section and unless the board of adjustments finds:

a. That there are special circumstances or conditions affecting the land involved such that the application of the provisions of this chapter would deprive the applicant of the reasonable use of his land;

b. That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;

c. That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;

d. That the granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this chapter; and

e. The granting of an individual variance will not set a precedent.

Such findings of the board of adjustments, together with the specific facts upon which such findings are based, shall be incorporated into the official minutes of the board of adjustments meeting at which such variance is granted.

(4) *Findings of undue hardship.* In order to grant a variance, the board of adjustments must make findings that an undue hardship exists, using the following criteria:

a. That literal enforcement of the controls will create an unnecessary hardship or practical difficulty in the development of the affected property;

b. That the situation causing the hardship or difficulty is neither self-imposed nor generally affecting all or most properties in the same zoning district;

c. That the relief sought will not injure the permitted use of adjacent conforming property;

d. That the granting of a variance will be in harmony with the spirit and purpose of this chapter; and

e. Financial hardship alone is not an undue hardship if the property can be used, meeting the requirements of the zoning district it is located in.

(5) *Self-inflicted hardship.* A variance shall not:

a. Be granted to relieve a self-created or personal hardship;

b. Be based solely upon economic gain or loss;

c. Permit or allow any person a privilege or advantage in developing a parcel of land not permitted or allowed by this chapter to other parcels of land in the same particular zoning district;

d. Result in undue hardship upon another parcel of land.

(g) *Special exceptions.*

(1) *Defined.* A special exception is a type of variance, but is differentiated from a variance by the following:

a. A special exception does not require a finding of a hardship.

b. Approval of a special exception by the board of adjustments is specifically provided for and defined in this chapter.

c. A special exception applies to nonconforming uses and structures, off-street parking requirements and landscaping requirements.

(2) *Requests.* The board of adjustments may grant a special exception to the provisions of sections 50-31, 50-112 and/or 50-113 upon written request of the property owner.

(3) *Standards.* The board may also grant a special exception in accordance with the following circumstances and/or standards:

a. Change from one nonconforming use to another, reconstruction of a nonconforming structure that has been totally destroyed, or resumption of a nonconforming use previously abandoned, only upon finding that the failure to grant the special exception deprives the property owner of substantially all use or economic value of the land.

b. For existing single-family and duplex (two-family) structures that were legally constructed prior to the effective date of the ordinance from which this chapter is derived, the board of adjustments may authorize a special exception for any structure that was constructed over a setback line established by this chapter.

(4) *Conditions.* In granting special exceptions under this subsection (g) of this section, the board may impose such conditions as are necessary to protect adjacent property owners and to

ensure the public health, safety and general welfare, including but not limited to conditions specifying the period during which the nonconforming use may continue to operate or exist before being brought into conformance with the provisions of this chapter.

(h) *Appeals.*

(1) *Authority.* In addition to the authorization of variances and special exceptions from the terms of this chapter, the board of adjustments shall have the authority to hear and decide an appeal that alleges error in an order, requirement, decision or determination made by an administrative official in the enforcement of this chapter. The board of adjustments may reverse or affirm, in whole or in part, or may modify the administrative official's order, requirement, decision or determination from which an appeal is taken and make the correct order, requirement, decision or determination, and for that purpose, the board of adjustments has the same authority as the city manager or his designee.

(2) *Who may appeal.* Any of the following persons may appeal to the board of adjustments a decision made by an administrative official:

a. A person directly aggrieved by the decision; or

b. Any officer, department, board, or bureau of the city affected by the decision.

(3) *Procedure for appeal.* The appellant must file with the board of adjustments and the official from whom the appeal is taken a written notice of appeal specifying the grounds for the appeal. The notice of appeal shall be filed within 15 calendar days after the decision has been rendered. Upon receiving the notice, the official from whom the appeal is taken shall immediately transmit to the board of adjustments all papers constituting the record of action that is appealed. An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the board of adjustments facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case, the proceedings may be stayed only by a restraining order granted by the board of adjustments or a court of appropriate jurisdiction on application, after notice to the official, if due cause is shown. The appellant party may appear at the appeal hearing in person or by agent or attorney. The board shall decide the appeal within 30 calendar days after the written request (i.e., notice of appeal) was received. The board may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision or determination from which an appeal is taken, and may make the correct order, requirement, decision or determination.

(i) *Procedures.*

(1) *Application and fee.* An application for a variance, special exception or appeal to the board of adjustments shall be made in writing using forms prescribed by the city, and shall be accompanied by an application fee in accordance with the city council's adopted fee schedule, a required plan (see section 50-36), and any other additional information as may be requested in order to properly review the application. There is no filing fee for an appeal filed by any officer, department, board, or bureau of the city affected by the decision.

(2) *Review and report by the city.* The city manager, or his designee, shall visit the site where the proposed variance or special exception will apply and the surrounding area, and shall report his findings to the board of adjustments.

(3) *Notice and public hearing.* The board of adjustments shall hold a public hearing for consideration of the variance or special exception request no later than 60 calendar days after the date the application for action, or an appeal, is filed. Notice shall be published in the official local newspaper before the 15th calendar day prior to the public hearing. Written notice of the public hearing for a variance or exception shall also be sent to all owners of property, as indicated by the most recently approved city tax roll, that is located within the area of application and within 200 feet of any property affected thereby, said written notice to be sent before the tenth calendar day prior to the date such hearing is held. Such notice shall be served by using the last known address as listed on the most recently approved tax roll and depositing the notice, postage paid, in the regular United States mail.

(4) *Action by the board of adjustments.* The board of adjustments shall not grant a variance unless it finds, based upon compelling evidence provided by the applicant, that each of the conditions in subsection (f) of this section have been satisfied. The board of adjustments may impose such conditions, limitations and safeguards as it deems appropriate upon the granting of any variance or special exception as are necessary to protect the public health, safety, convenience and welfare. Violation of any such condition, limitation or safeguard shall constitute a violation of this chapter.

(5) *Burden of proof.* The applicant bears the burden of proof in establishing the facts that may justify a variance, a special exception, an appeal, or any other action in his favor by the board.

(6) *Waiting period.* No appeal to the board for the same or a related variance or special exception on the same piece of property shall be allowed for a waiting period of 180-calendar-days following an unfavorable ruling by the board unless other property in the immediate vicinity has, within the 180 calendar day waiting period, been changed or acted upon by the board or the city council so as to alter the facts and conditions upon which the previous unfavorable board action was based. Such changes of circumstances shall permit the re-hearing of a variance or special exception request by the board, but such circumstances shall in no way have any force in law to compel the board, after a hearing on the matter, to grant a subsequent variance or special exception request. Any subsequent variance or special exception request shall be considered entirely on its own merits and on the specific circumstances related to the subject property.

(7) *Timeliness of application for building permit or certificate of occupancy.* Upon a favorable board action on a variance or special exception request, the applicant shall apply for a building permit or a certificate of occupancy, as applicable to his particular situation, within 180-calendar-days following the date of board action, unless the board specifies a longer time period in the minutes of its action. If the applicant fails to apply for a building permit or certificate of occupancy, as applicable, within the 180 calendar day timeframe, then the variance or special exception shall be deemed to have expired, and all rights thereunder shall be terminated. Such termination shall be without prejudice to a subsequent appeal, and such subsequent appeal shall be subject to the same regulations and requirements for hearing as specified in this chapter for the original variance or special exception request.

(j) *Finality of decisions; judicial review; final and binding; petition.* All decisions of the board of adjustments are final and binding and may not be appealed to the city council. However, any person aggrieved by a decision of the board of adjustments may present a verified petition to a court of appropriate jurisdiction that states that the decision of the board is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition must be presented within ten calendar days after the date the board's decision is filed in the office of the secretary to the board. Subject to the provisions of V.T.C.A., Local Government Code § 211.011, only a court with appropriate jurisdiction may reverse, affirm or modify a decision of the board of adjustments.

(Ord. No. 2008-01, § 9, 2-4-2008)

Sec. 50-34. Amendments to zoning chapter and districts, administrative procedures, and enforcement.

(a) *Declaration of policy and review criteria.*

(1) The city declares the enactment of the ordinance from which this chapter is derived governing the use and development of land, buildings, and structures as a measure necessary to the orderly development of the community. Therefore, no change shall be made in this chapter or in the boundaries of the zoning districts except:

a. To correct any error in the regulations or map;

b. To recognize changed or changing conditions or circumstances in a particular locality;

c. To recognize changes in technology, the style of living, or manner of conducting business; or

d. To change the property to uses in accordance with the city's adopted comprehensive plan.

(2) In making a determination regarding a requested zoning change, the planning and zoning commission and the city council shall consider the following factors:

a. Whether the uses permitted by the proposed change will be appropriate in the immediate area concerned, and their relationship to the general area and to the city as a whole;

b. Whether the proposed change is in accordance with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers, and other utilities to the area;

c. The amount of vacant land currently classified for similar development in the vicinity and elsewhere in the city, and any special circumstances which may make a substantial part of such vacant land unavailable for development;

d. The recent rate at which land is being developed in the same zoning classification as the request, particularly in the vicinity of the proposed change;

e. How other areas designated for similar development will be, or are likely to be, affected if the proposed amendment is approved;

f. Any other factors that will substantially affect the public health, safety, morals, or general welfare; and

g. Whether the request is consistent with the comprehensive plan.

(b) *Application.*

(1) *Generally.* Consideration for:

a. A change in any zoning district boundary line;

b. Zoning regulation; or

c. An amendment to the zoning chapter text;

May be initiated only by the owner of real property (or his authorized agent), by the planning and zoning commission, or by the city council on its own motion.

(2) *Fee required.* Each application for zoning, rezoning, conditional use permit (CUP), planned development (PD), or for a text amendment to a provision of this chapter, shall be made in writing on an application form available in the planning director's office, and shall be accompanied by payment of the appropriate fee as established by resolution adopted by the city council.

(3) *Form developed.* The planning director is hereby authorized to develop application forms requiring pertinent information from the applicant.

(4) *Date due.* The application shall be delivered to the city at least 40 calendar days prior to the date of the public hearing before the planning and zoning commission.

(5) *Payment of all indebtedness attributable to the subject property.* Refer to section 50-36(3).

(6) *Official filing date, completeness of application, expiration of application.* The following shall apply to any application (e.g., concept plan, building permit plan, site plan) submitted in accordance with this chapter:

a. *Official filing date.* The time period established by state law or this chapter for processing or deciding an application shall commence on the official filing date. The official filing date for a required plan application is the date the application is received by the city.

b. *Determination of completeness.* Every required plan application shall be subject to a determination of completeness within ten business days by the planning director for processing the application.

1. No required plan application shall be accepted by the planning director for processing unless it is accompanied by all documents required by and prepared in accordance with the requirements of this chapter.

2. The incompleteness of the required plan application shall be grounds for denial of the application.

3. A determination of completeness shall not constitute a determination of compliance with the substantive requirements of this chapter.

4. A determination of completeness shall be made by the planning director in writing and delivered to the applicant no later than the tenth business day after the official filing date that the required plan application is submitted to the city.

(i) The applicant shall be notified within that ten-business-day period of the determination of completeness.

(ii) If the required plan application is determined to be complete, the application shall be acted upon in the proper manner as prescribed by this chapter.

(iii) If the required plan application is determined to be incomplete, the notification shall specify the documents or other information needed to complete the application and shall state the date the application will expire (see subsection (b)(6)c of this section) if the documents or other information is not provided.

(iv) A required plan application shall be deemed complete on the 11th business day after the application has been received if the applicant has not otherwise been notified that the application is incomplete.

c. *Expiration of application.* The required plan application shall expire on the 45th calendar day after the date the application is filed if:

1. The applicant fails to provide documents or other information necessary to comply with the city's requirements relating to the required plan application;

2. The city provides to the applicant, not later than the tenth business day after the date the application is filed, written notice that specifies the necessary documents or other information, and the date the application will expire if the documents or other information is not provided; and

3. The applicant fails to provide the specified documents or other information within the time provided in the notification. If the required plan application is not completed by the 45th calendar day after the application is submitted to the responsible official, the required plan application will be deemed to have expired and it will be returned to the applicant together with any accompanying applications.

d. *Resubmittal.* If the required plan application is resubmitted after a notification of incompleteness, the timeframe for a determination of completeness described in subsection (b)(6)3 of this section shall begin on the date of the resubmittal of the required plan application.

(c) *Notice of public hearing.*

(1) *Public hearing for zoning changes involving real property.* For zoning and rezoning requests involving real property (including PD and CUP requests), the planning and zoning commission and the city council shall hold at least one public hearing on each zoning application, as per applicable state law (V.T.C.A., Local Government Code ch. 211).

a. Notice of the public hearing to occur before the planning and zoning commission shall be accomplished by publishing the purpose, time and place of the public hearing in the official newspaper of the city before the eighth calendar day prior to the date of the public hearing.

b. Notice of the public hearing to occur before the city council shall be accomplished by publishing the purpose, time and place of the public hearing in the official newspaper of the city before the 15th calendar day prior to the date of the public hearing.

c. Written notice of the public hearing before the planning and zoning commission shall also be sent to all owners of property, as indicated by the most recently approved city tax roll, that is located within the area of application and within 200 feet of any property affected thereby, said written notice to be sent before the tenth calendar day prior to the date such hearing is held. Such notice shall be served by using the last known address as listed on the most recently approved tax roll and depositing the notice, postage paid, in the regular United States mail. If written notice as required is not sent before the tenth calendar day prior to the date of the hearing, then the hearing must be delayed until this notice requirement is met.

(2) *Public hearing for zoning changes involving ordinance text.* For requests involving proposed changes to the text of the zoning chapter, notice of the planning and zoning commission hearing shall be accomplished by publishing the purpose, time and place of the public hearing in the official newspaper of the city before the eighth calendar day prior to the date of the public hearing. Notice of the city council hearing shall be accomplished by publishing the purpose, time and place of the public hearing in the official newspaper of the city before the 15th calendar day prior to the date of the public hearing. Changes in the chapter text which do not change zoning district boundaries (i.e., which do not involve specific real property) do not require written notification to individual property owners.

(3) *Dual notification of planning and zoning commission public hearings and city council public hearings.* The city may, at its option, publish the required zoning change notifications in conformance with V.T.C.A., Local Government Code ch. 211 for public hearings for the planning and zoning commission and the city council at the same time; said notifications must be published eight days prior to the planning and zoning commission public hearing and 15 days prior to the city council public hearing.

(4) *Joint public hearings.* The city council may hold a joint public hearing on a zoning, rezoning or zoning chapter text amendment request along with the planning and zoning commission, but the city council shall not take action on the request until it has received a final recommendation from the commission. Notification for a joint public hearing shall be accomplished by publishing the purpose, time and place of the joint public hearing in the official newspaper of the city before the 15th calendar day prior to the date of the public hearing. In accordance with V.T.C.A., Local Government Code § 211.007, the city council shall prescribe any other necessary methods of notification for joint public hearings.

(5) *Additional rules and procedures established.* The city council may, at its option, establish additional rules and procedures for public notification of proposed zoning changes and development proposals (e.g., required plans, plats, etc.) which may include, but not be limited to, the posting of a signs on any property that is proposed for a zoning change or development by the applicant or its agents. Knowledge of and adherence to such rules and procedures, if so established by the city, shall be the responsibility of the applicant and shall be required as part of a zoning change or development application.

(d) *Failure to appear.* Failure of the applicant or his authorized representative to appear before the planning and zoning commission or the city council for more than one hearing without an approved delay by the city manager, or his designee, shall constitute sufficient grounds for the planning and zoning commission or the city council to table or deny the application unless the city manager or his designee is notified in writing by the applicant at least 72 hours prior to the hearing. If the agenda item is tabled, the planning and zoning commission shall specify a specific date at which it will be reconsidered.

(e) *Planning and zoning commission consideration and recommendation.*

(1) *Accordance with section 50-32* The planning and zoning commission shall function in accordance with section 50-32 and with applicable provisions in this Code.

(2) *Tabling of the decision/recommendation.* The planning and zoning commission may, on its own motion or at the applicant's request, table its decision/recommendation for not more than 90 calendar days from the time the public hearing was first opened. Such tabling shall specifically state the time period of the tabling by citing the meeting date whereon the request will reappear on the commission's agenda, and further notice in the newspaper and to surrounding property owners shall not be required.

(3) *Recommending approval.* When the commission is ready to act upon the zoning request, it may recommend approval of the request as it was submitted by the applicant, approval of the request subject to certain conditions, or disapproval of the request. The request will then be forwarded to the city council for public hearing (see subsection (f)(2) of this section). The commission may recommend more restrictive uses, area requirements, restrictions or a zoning district than was requested in the original application and included in the advertised and written notice. In no case, however, may a use, area requirement or restriction that is considered less restrictive or a less restrictive zoning district than was requested in the original application and included in the advertised and written notice be recommended.

(4) *Recommending denial.* If the planning and zoning commission recommends denial of the zoning change request, it shall provide reasons to the applicant for the denial, if requested by the applicant. The planning and zoning chairperson shall inform the applicant of the right to receive reasons for the denial. The recommendation of denial will then be forwarded to the city council for public hearing (see subsection (f)(2) of this section).

(f) *City council authority and consideration.*

(1) *City council authority.* The city council, after receiving a recommendation by the planning and zoning commission and after public hearings required by law, may amend, supplement, or change the regulations of this chapter or the boundaries of the zoning districts on the zoning map.

(2) *Applications forwarded to the city council.* After consideration by the planning and zoning commission, all zoning applications shall be automatically forwarded to the city council for a public hearing following appropriate public hearing notification as prescribed in subsection (f)(1) of this section.

(3) *City council action on zoning, rezoning or text amendment requests.* After a public hearing is held before the city council regarding the zoning application, the city council may:

a. Approve the request in whole or in part (if the city council approves the request, then subsection (f)(5) of this section will apply);

b. Modify and approve the request to any more restrictive uses, area requirements, restrictions or zoning district than was requested in the original application and included in the advertised and written notice. In no case, however, may a use, area requirement or restriction that is considered less restrictive or a less restrictive zoning district than was requested in the original application and included in the advertised and written notice be approved;

c. Deny the request in whole or in part;

d. Table the application to a future meeting (and specifically citing the city council meeting to which it is tabled); or

e. Refer the application back to the planning and zoning commission for further study.

(4) *Protests.* For zoning and rezoning requests involving real property (including PD and CUP requests), a favorable vote of three-fourths of all members of the city council shall be required to approve any change in zoning when written objections are received from the owners of 20

percent or more of the land area covered by the proposed change, or of the land area within 200 feet of the subject property, in accordance with the provisions of V.T.C.A., Local Government Code § 211.006 (commonly referred to as the "20 percent rule"). If a protest against such proposed zoning change has been filed with the city secretary, duly signed and acknowledged by the owners of 20 percent or more, either of the area of the land included in such a proposed change or those owners of property immediately adjacent to the subject property and extending 200 feet therefrom, such zoning change shall not become effective except by a three-fourths vote of the full city council.

(5) *Final approval and ordinance adoption.* Upon approval of the zoning request by the city council, the applicant shall submit all related material with revisions, if necessary, to the city manager (or his designee) for the preparation of the amending ordinance. The amending ordinance will be prepared for adoption when a correct description and all required exhibits have been submitted to the city manager or his designee. The amending ordinance shall be effective at such time that it is adopted by the city council, signed by the mayor, and attested by the city secretary.

(g) *Administration and enforcement.*

(1) *Authority to enforce chapter.* The city manager, or his designee, shall be authorized by the city council to administer and enforce the provisions of this chapter. If the city manager (or his designee) finds, upon his own personal observation, or upon receipt of a complaint, that the provisions of this chapter are being violated, he shall immediately investigate and, when necessary, give written notice to the persons responsible to cease or correct such violations immediately. Notice may be delivered in person or by certified mail to the violators or to any person owning, leasing, or occupying a property where the violation is occurring. The city manager, or his designee, shall have the right to enter upon any business premises during regular business hours for the purpose of making inspections of buildings or premises that may be necessary to carry out the duties in the enforcement of this chapter. The city manager, or his designee, shall request permission of a residence owner to enter upon residential premises for the purpose of making inspections of buildings or premises that may be necessary to carry out the duties in the enforcement of this chapter. If the owner of a residence refuses permission to make such inspection or if an inspection of a business is needed after hours or while not open to the public, then the city staff may work with the city attorney to obtain a warrant or other legal authorization to make such inspections.

(2) *Stop work orders.* Whenever any building or construction work is being done contrary to the provisions of this chapter, the city manager, or his designee, shall have the authority to order the work stopped by notice in writing served on the property owner or the contractor doing the work or causing such work to be done, or by posting on the new construction itself and any such person shall forthwith stop such work until authorized in writing by the city to proceed with such work. Failure to immediately stop work as provided by this subsection shall constitute a violation of this chapter, in accordance with section 50-5, and may incur penalties for such violation.

(h) *Schedule of fees, charges and expenses.*

(1) *Action dependent on fees paid.* Until all applicable fees, charges and expenses have been paid in full, no action shall be taken on any zoning, rezoning or development application or on any appeal.

(2) *Fee schedule.* The city council shall determine and adopt a fee schedule as currently established or as hereafter adopted by resolution from time to time for the purpose of recovering the administrative costs associated with processing zoning and development requests, including public hearings that are called for in this chapter. Such fees shall be paid by the applicant and shall not be designed to in any way restrict the applicant's ability to seek and receive a hearing or to generate revenue for other than recovery of actual administrative costs incurred by the city in the review and processing of applications. Immediately upon receipt of a complete submission (in accordance with subsection (h)(1) of this section), the city secretary or his designee shall issue a fee receipt and shall create a city record thereof.

(Ord. No. 2008-01, § 10, 2-4-2008)

Sec. 50-35. Building permits; certificates of occupancy and compliance.

(a) *Building permits required.* No building or other structure shall be erected, moved, added to, or structurally altered without a permit issued by the building official, or his designee. A building permit shall not be issued except in conformity with the provisions of this chapter, unless otherwise authorized by the board of adjustments in the form of a variance or special exception as provided in section 50-33(f) or (g) of this chapter, or authorized to replace or expand a nonconforming use in accordance with section 50-31. A building permit shall not be issued until the property is properly zoned for the intended use, until the property is platted in accordance with chapter 40, pertaining to subdivisions, and not until all appropriate plans have been approved by the city and all applicable ordinances have been met and all fees have been paid.

(b) *Cancellation of building permit.* Failure of an applicant or any of his agents, representatives or contractors to erect, construct, reconstruct, alter, use or maintain any building, structure or premises in conformance with the approved plans upon which a building permit was issued, when such failure constitutes a violation of any provision of this chapter and applicant fails to make corrections upon proper notice, shall render such building permit void, and the building official, or his designee, is hereby authorized and directed to revoke any such permit by giving written notice to the applicant or his agent or representative, and all work upon such building, structure or premises shall be immediately discontinued until such building, structure or premises shall be brought into conformance with the approved plans and with all applicable provisions of this chapter. Expiration of building permits shall be in accordance with the building codes of the city.

(c) *Certificate of occupancy.*

(1) *Required.* A certificate of occupancy shall be required for any of the following:

a. Occupancy and use of a building hereafter erected or structurally altered;

b. Change in use of an existing building and/or the use of land to a use of a different classification.

(2) *No work before certificate of occupancy issued.* No such use, or change of use, shall take place until a certificate of occupancy therefor shall have been issued by the building official or his designee. The application fees for a certificate of occupancy shall be as set forth by resolution of the city council.

(3) *Record of certificate of occupancy.* A record of all certificates of occupancy shall be kept on file in the building official's office or his designee's office, and copies shall be furnished upon request to any person in accordance with state laws governing public records.

(4) *Procedure for new or altered buildings.* Written application for a certificate of occupancy for a new building or for an existing building which is to be altered shall be made at the same time as the application for the building permit for such building. Said certificate shall be issued after the building official, or his designee, orders the building or structure inspected and finds no violations of the provisions of this chapter or other regulations which are enforced by the building official or his designee. Said certificate shall be issued by the building official, or his designee, after the erection or alteration of such building or part thereof has been completed in conformity with all applicable provisions of this chapter.

(5) *Procedure for vacant land or a change in building use.* Written application for a certificate of occupancy for the use of vacant land, a change in the use of land or a change in the use of a building, or for a change from a nonconforming use to a conforming use, shall be made to the building official or his designee. If the proposed use is a conforming use, as in this chapter provided, written application shall be made to said building official or his designee. If the proposed use is found to be in conformity with the provisions of this chapter, the certificate of occupancy shall be issued after the application for same has been made and all required inspections are completed and approved by the building official or his designee.

(6) *Contents of certificate of occupancy.* Every certificate of occupancy shall contain the following:

a. Building permit number;

b. The address of the building;

c. The name and address of the owner;

d. A description of that portion of the building for which the certificate is issued;

e. A statement that the described portion of the building has been inspected for compliance with the requirements of the city's building codes for the particular group and division of occupancy;

f. The name of the building official or his designee;

g. Uses allowed;

h. Maximum number of persons/occupants; and

i. Issue date of certificate of occupancy.

(7) *Posting of certificate of occupancy.* The certificate of occupancy shall be posted in a conspicuous place on the premises on a location approved by the building official and shall not be removed except by the building official or his designee.

(8) *Revocation of certificate of occupancy.* The building official (or his designee) may, in writing, suspend or revoke a certificate of occupancy issued under the provisions of this chapter whenever the certificate is issued in error, or on the basis of incorrect information supplied, or when it is determined that the building or structure or portion thereof is in violation of any ordinance or regulation or any of the provisions of this chapter or the building code and other codes adopted by the city, and any amendments thereto.

(9) *Exemptions.* Single-family and duplex (two-family) dwellings do not require a certificate of occupancy but do require a final clearance or whatever approval is utilized in the building code to allow residential occupancy.

(d) *Completion of buildings in progress.* Nothing contained in this section shall require any change in the plans, construction or designated use of a building, the foundation for which has been completely constructed as of the effective date of the ordinance from which this chapter is derived, and the remaining construction of which shall have been completed within one year (i.e., 365 calendar days) following the effective date of the ordinance from which this chapter is derived.

(Ord. No. 2008-01, § 11, 2-4-2008)

Sec. 50-36. Submission and review of concept plans, building permit plans and site plans.

(a) *Approval process.*

(1) *Maximum of three steps.* The review process shall include up to three steps:

a. Preapplication conference with the city manager or his designee. (refer to section 50-36(b));

b. Concept plan, building permit plan, or site plan review and approval; and

c. Construction of project (after city approval of all required plans and plats).

(2) *Type of plan required.*

a. *Concept plan.*

1. A concept plan shall be required for all planned development applications.

2. All requirements for such applications are included in section 50-80 for planned developments.

3. A concept plan validity and/or lapse or expiration shall be in accordance with sections 50-34(b)(6) and 50-37

b. *Building permit plan.*

1. A building permit plan shall be required for development within all zoning districts. A site plan or concept plan shall be submitted and approved first in those districts where required.

2. The approval process for a building permit plan shall generally be review for conformance to city ordinances and approval by the building official or his designee.

3. A building permit plan validity and/or lapse or expiration shall be in accordance with sections 50-34(b)(6) and 50-37

c. *Site plan.*

1. A site plan shall be required for development within all zoning districts except single-family residential districts.

2. The approval process for a site plan shall generally be review for conformance to city ordinances and approval by the city engineer (or his designee).

3. A site plan validity and/or lapse or expiration shall be in accordance with sections 50-34(b)(6) and 50-37

d. *Required plans.* For the purposes of this zoning chapter, the term "required plans" is intended to refer to any of the plans listed in subsections (2)a through c of this section, as applicable.

(3) *Payment of all indebtedness attributable to the subject property.* No person who owes delinquent taxes, delinquent paving assessments, or any other fees, delinquent debts or obligations or is otherwise indebted to the city, and which are directly attributable to a piece of property shall be allowed to submit any application for any type of rezoning, building permit, or plan review until the taxes, assessments, debts, or obligations directly attributable to said property and owed by the owner or previous owner thereof to the city shall have been first fully discharged by payment, or until an arrangement satisfactory to the city has been made for the payment of such debts or obligations. It shall be the applicant's responsibility to provide evidence or proof that all taxes, fees, etc., have been paid, or that other arrangements satisfactory to the city have been made for payment of said taxes, fees, etc.

(4) *Official submission date, completeness of application, and expiration of application.* All applications must be submitted, reviewed for completeness and approved in accordance with section 50-34(b).

(5) *Supplemental requirements.* The city's staff may require other information and data for specific required plans. Approval of a required plan may establish conditions for construction based upon such information.

(b) *Preapplication conference.* Prior to formal application for approval of any required plan, the applicant may wish to consult with the city manager or his designee, the building official, the city engineer, and any other pertinent city officials in order to become familiar with the city's development regulations and the development process. At the preapplication conference, the developer may be represented by his land planner, engineer, surveyor, or other qualified professional. If such conference is desired, then the applicant shall sign a form or submit a letter stating the conference shall not establish vesting of property rights.

(c) *Site plan.*

(1) *Purpose.* This section establishes a review process for non-single-family developments, including those within a planned development or utilizing a conditional use permit. The purpose is to ensure that a development project is in compliance with all applicable city ordinances and guidelines prior to commencement of construction.

(2) *Applicability.* Submission and approval of a site plan shall be required for all development within the following zoning districts: all nonresidential and multifamily districts.

(3) *Building permit and certificate of occupancy.* A site plan shall be submitted in conjunction with a building permit application (this is a different application than the building permit plan that is discussed later within this section). No building permit shall be issued until a site plan, as required, and all other required engineering/plats/construction plans are first approved by the city. No certificate of occupancy shall be issued until all construction and development conforms to the site plan and engineering/construction plans, as approved by the city.

(4) *Extent of area that should be included in a site plan.* When the overall development project is to be developed in phases, the area included within the site plan shall include only the portion of the overall property that is to be developed/constructed. The city manager or his designee may require a concept of the future phases to be submitted in conjunction with the site plan, but such plans are not part of the approval process and only to determine if the initial phases will work.

(5) *Procedures and submission requirements for site plan approval.* All site plans shall be prepared by a qualified civil engineer, land planner, architect and/or surveyor, and it shall clearly show in detail how the site will be constructed (such as paving, buildings, landscaped areas, utilities, etc.). To ensure the submission of adequate information, the city is hereby empowered to maintain and distribute a separate list of specific requirements for the review of site plan applications.

(6) *Review and approval of a site plan.*

a. *City staff review of site plans.*

1. Upon official submission of a complete application of a site plan for approval, the city shall review the application. Specifically, the city engineer, and the building official or his designee, shall review the site plan for conformance to this and other adopted city ordinances. Determination of application completeness, notice to applicant of missing documents and information within ten business days and expiration of application within 45 calendar days due to incompleteness shall be in accordance with section 50-34(b).

2. Site plans shall be evaluated to ensure that all developments are, to the best extent possible, constructed according to the city's codes and ordinances.

3. Following city staff review, and following discussions regarding necessary revisions, the applicant shall resubmit additional copies of the corrected site plan to the city manager or his designee.

4. The city manager or his designee shall approve, approve with conditions or deny the corrected plan.

5. It should be noted that the city manager or his designee shall deny the original plan application if the corrected version is not resubmitted within the prescribed time period.

6. It should also be noted that a corrected plan that is incomplete or is otherwise not ready for consideration shall be subject to denial.

b. *Site plan appeal process.*

1. The applicant or property owner may appeal a denied site plan by the city staff to the planning and zoning commission by filing a written notice of appeal in the office of the city manager or his designee no later than ten calendar days after the date upon which staff denied the site plan.

2. The notice of appeal shall set forth in clear and concise fashion the basis for the appeal. The commission shall consider the appeal at a public meeting no later than 30 calendar days after the date upon which the notice of appeal was filed.

3. The applicant or property owner may appeal a denial of the appeal by the planning and zoning commission to the city council.

4. The city council may affirm or reverse the decision of the planning and zoning commission by a simple majority vote.

5. The city council may also, where appropriate, remand the site plan application back to the commission for reconsideration if it believes that there is a compelling reason to do so (such as the introduction of significant new facts or testimony, etc.).

(7) *Revisions to the approved site plan.*

a. *Minor revisions/amendments.*

1. It is recognized that final architectural and engineering design may necessitate minor changes in the approved site plan. In such cases, the city manager, or his designee, shall have the authority to approve minor modifications to an approved site plan. Such minor modifications shall be submitted on an amended site plan, which shall substantially conform to the previously approved site plan.

2. Submission materials and requirements for approval of an amended site plan shall be as determined by the city manager or his designee.

b. *Major revisions.* In the event of revisions that are more extensive in nature (i.e., do not conform to the description for minor amendments in subsection (c)(7)a of this section), a revised site plan must be resubmitted, reviewed, and approved by the city manager or his designee. The city manager or his designee shall have the authority to determine whether a revised site plan warrants a review and approval as outlined in subsection (c)(7)a of this section.

(8) *Effect of review/approval.* The site plan shall be considered authorization to proceed with construction of the site provided all other required plans and city approvals are obtained (such as final plat, civil engineering plans, etc.).

(9) *Validity, lapse, and reinstatement of site plan.* Refer to section 50-37

(d) *Building permit plan.*

(1) *Purpose.* This section establishes a review process for all development within zoning districts in which a site plan or concept plan is not required. The purpose is to ensure that development projects are in compliance with all applicable city ordinances and guidelines prior to commencement of construction.

(2) *Applicability.* Submission and approval of a building permit plan shall be required for all development within all zoning districts in accordance with the adopted building codes of the city.

(3) *Building permit and certificate of occupancy.* Building permit plans shall be submitted in conjunction with a building permit application. No building permit shall be issued until a building permit plan, as required, and all other required engineering/construction plans are first approved by the city. No certificate of occupancy shall be issued until all construction and development conforms to the building permit plan and engineering/construction plans, as approved by the city.

(4) *Extent of area that should be included in a building permit plan.* When the overall development project is to be developed in phases, the area included within the building permit plan shall include only the portion of the overall property that is to be developed/constructed.

(5) *Procedures and submission requirements for building permit plan approval.* All building permit plans shall be prepared in accordance with the adopted building codes by a qualified civil engineer, land planner, architect and/or surveyor, if required, and it shall clearly show in detail how the site will be constructed (such as paving, buildings, landscaped areas, utilities, etc.). To ensure the submission of adequate information, the city is hereby empowered to maintain and distribute a separate list of specific requirements for the review of applications.

(6) *Review and approval of a building permit plan.*

a. *City staff review and approval of building permit plans.*

1. Upon official submission of a complete application of a building permit plan for approval, the city shall review the application. Specifically, the city manager, city engineer, and the building official (or their designee) shall review the building permit plan. Determination of application completeness, notice in writing to applicant of missing documents and information within ten business days and expiration of application with 45 calendar days due to incompleteness shall be in accordance with section 50-34(b)(6)c.

2. Building permit plans shall be evaluated to ensure that all developments are, to the best extent possible, constructed according to the city's codes and ordinances.

3. Following city staff review, the city manager or his designee shall approve, approve subject to certain conditions, or deny approval of the building permit plan.

b. *Building permit plan appeal process for zoning reasons.*

1. The applicant or property owner may appeal the denial of a building permit plan for not meeting the regulations contained in this chapter to the planning and zoning commission by filing a written notice of appeal in the office of the city manager or his designee no later than ten calendar days after the date upon which the city manager or his designee denied the building permit plan. Appeals of denials of permits for not meeting the regulations contained in the adopted building codes shall be processed in accordance with the procedures contained in those codes.

2. The notice of appeal shall set forth in clear and concise fashion the basis for the appeal. The planning and zoning commission shall consider the appeal at a public meeting not later than 60 calendar days after the date upon which the notice of appeal was filed.

3. The planning and zoning commission may affirm or may change the decision of the city manager or his designee by a simple majority vote.

4. The planning and zoning commission may also, where appropriate, remand the building permit plan application back to the city manager or his designee for reconsideration if it believes that there is a compelling reason to do so (such as the introduction of significant new facts or testimony, etc.).

(7) *Revisions to the approved building permit plan.*

a. *Minor revisions/amendments.*

1. It is recognized that final architectural and engineering design may necessitate minor changes in the approved building permit plan. In such cases, the city manager, or his designee shall have the authority to approve minor modifications to an approved building permit plan. Such minor modifications shall be submitted on an "amended building permit plan", which shall substantially conform to the previously approved building permit plan.

2. Submission materials and requirements for approval of an amended building permit plan shall be as determined by the city manager or his designee.

b. *Major revisions.* In the event of revisions that are more extensive in nature (i.e., do not conform to the description for minor amendments in subsection (d)(7)a of this section), a revised building permit plan must be resubmitted, reviewed, and approved by the city manager or his designee. The city manager or his designee shall have the authority to determine whether a revised building permit plan warrants a review and approval as outlined in subsection (d)(7)a of this section.

(8) *Effect of review/approval.* The building permit plan shall be considered authorization to proceed with construction of the site provided all other required city approvals are obtained (such as final plat, engineering plans, etc.).

(9) *Validity, lapse, and reinstatement of building permit plan.* Refer to section 50-37

(Ord. No. 2008-01, § 12, 2-4-2008)

Sec. 50-37. Vested rights and review procedure.

(a) *Land use upon annexation validity and lapse.* Vested rights in land use upon annexation shall be governed by V.T.C.A., Local Government Code § 43.002.

(b) *Permit, plan or planned development validity and lapse.*

(1) *Site plan validity and lapse of approval.* A site plan shall be considered a "permit" as described by state law in V.T.C.A., Local Government Code § 245.005.

a. *Valid for two years.* Any approved site plan shall be deemed expired two years from the date on which the site plan was originally approved by the city council if no progress has been made toward completion of the project.

b. *Progress benchmarks.* The term "progress" shall be as defined based on V.T.C.A., Local Government Code § 245.005 as follows:

1. Plans for construction and an application for a building permit for at least one of the buildings on the approved site plan are submitted within two years following approval of the site plan;

2. A good-faith attempt is made to file with the city an application for a permit necessary to begin or continue towards completion of the project;

3. Costs have been incurred for developing the project, including, without limitation, costs associated with roadway, utility, and other infrastructure facilities designed to serve, in whole or in part, the project (but exclusive of land acquisition) in the aggregate amount of five percent of the most recent appraised market value of the real property on which the project is located;

4. Fiscal security is posted with the city to ensure performance of an obligation required by the city; or

5. Utility connection fees or impact fees for the project have been paid to the city.

c. *Expiration.* If one of the items listed in subsection (b)(1)b.1 through 5 of this section is not accomplished within the two-year period, the approved site plan shall expire upon the second anniversary of its approval by the city council and shall become null and void.

d. *Extension and reinstatement procedure.*

1. Prior to the lapse of approval for a site plan, the applicant may petition the city (in writing) to extend the site plan approval.

2. Such petition shall be recommended for approval or denial by the planning and zoning commission, and shall be granted approval or denial by the city council.

3. If no petition is submitted, then the site plan shall be deemed to have expired and shall become null and void. Any new request for site plan approval thereafter shall be deemed a new permit, and shall be submitted with a new application form, with a new filing fee, and with new plans and materials in accordance with the procedures set forth in this section. The new request shall also be reviewed for compliance with the ordinances and regulations in effect at the time the new application is made.

4. In determining whether to grant a request for extension, the planning and zoning commission and the city council shall take into account:

   (i) The reasons for the lapse;

   (ii) The ability of the property owner to comply with any conditions attached to the original approval; and

   (iii) The extent to which development regulations would apply to the site plan at that point in time.

(2) *Building permit plan and validity and lapse of approval.* A building permit plan shall be considered a "permit" as described in V.T.C.A., Local Government Code § 245.005.

a. *Valid for two years.* Any approved building permit plan shall be deemed expired two years from the date on which the building permit plan was originally approved by the city council if no progress has been made toward completion of the project.

b. *Progress benchmarks.* The term "progress" shall be as defined based on V.T.C.A., Local Government Code § 245.005 as follows:

1. Plans for construction and an application for a building permit for at least one of the buildings on the approved building permit plan are submitted within two years following approval of the building permit plan;

2. A good-faith attempt is made to file with the city an application for a permit necessary to begin or continue towards completion of the project;

3. Costs have been incurred for developing the project including, without limitation, costs associated with roadway, utility, and other infrastructure facilities designed to serve, in whole or in part, the project (but exclusive of land acquisition) in the aggregate amount of five percent of the most recent appraised market value of the real property on which the project is located;

4. Fiscal security is posted with the city to ensure performance of an obligation required by the city; or

5. Utility connection fees or impact fees for the project have been paid to the city.

c. *Expiration.* If one of the items listed in subsection (b)(2)b.1 through 5 of this section is not accomplished within the two-year period, then the approved building permit plan shall expire and shall become null and void.

d. *Extension and reinstatement procedure.*

1. Prior to the lapse of approval for a building permit plan, the applicant may petition the city (in writing) to extend the building permit plan approval.

2. Such petition shall be recommended for approval or denial by the planning and zoning commission and shall be granted approval or denial by the city council.

3. If no petition is submitted, then the building permit plan shall be deemed to have expired and shall become null and void. Any new request for building permit plan approval shall be deemed a new permit, and shall be submitted with a new application form, with a new filing fee, and with new plans and materials in accordance with the procedures set forth in this section. The new request shall also be reviewed for compliance with the ordinances and regulations in effect at the time the new application is made.

4. In determining whether to grant a request for extension, the planning and zoning commission and the city council shall take into account:

   (i) The reasons for the lapse;

(ii) The ability of the property owner to comply with any conditions attached to the original approval; and

(iii) The extent to which development regulations would apply to the building permit plan at that point in time.

(3) *Conditional use permit (CUP) concept plans; validity and expiration.* A CUP concept plan shall be considered a "permit" as described in V.T.C.A., Local Government Code § 245.005.

a. *Valid for two years.* Any approved CUP concept plan shall be deemed expired two years from the date on which the CUP concept plan was originally approved by the city council if no progress has been made toward completion of the project.

b. *Progress benchmarks.* The term "progress" shall be as defined based on V.T.C.A., Local Government Code § 245.005 as follows:

1. Plans for construction and an application for a building permit for at least one of the buildings on the approved CUP concept plan are submitted within two years following approval of the CUP concept plan;

2. A good-faith attempt is made to file with the city an application for a permit necessary to begin or continue towards completion of the project;

3. Costs have been incurred for developing the project including, without limitation, costs associated with roadway, utility, and other infrastructure facilities designed to serve, in whole or in part, the project (but exclusive of land acquisition) in the aggregate amount of five percent of the most recent appraised market value of the real property on which the project is located;

4. Fiscal security is posted with the city to ensure performance of an obligation required by the city; or

5. Utility connection fees or impact fees for the project have been paid to the city.

c. *Expiration.* If one of the items listed in subsection (b)(3)b.1 through 5 of this section is not accomplished within the two-year period, then the approved CUP concept plan shall expire and shall become null and void.

d. *Extension and reinstatement procedure.*

1. Prior to the lapse of approval for a CUP concept plan, the applicant may petition the city (in writing) to extend the CUP concept plan approval.

2. Such petition shall be recommended for approval or denial by the planning and zoning commission and shall be granted approval or denial by the city council.

3. If no petition is submitted, then the CUP concept plan shall be deemed to have expired and shall become null and void. Any new request for CUP concept plan approval shall be deemed a new permit, and shall be submitted with a new application form, with a new filing fee, and with new plans and materials in accordance with the procedures set forth in this section. The new request shall also be reviewed for compliance with the ordinances and regulations in effect at the time the new application is made.

4. In determining whether to grant a request for extension, the planning and zoning commission and the city council shall take into account:

(i) The reasons for the lapse;

(ii) The ability of the property owner to comply with any conditions attached to the original approval; and

(iii) The extent to which development regulations would apply to the CUP concept plan at that point in time.

(4) *Planned development (PD) concept plans; validity and expiration.* In conformance with V.T.C.A., Local Government Code § 245.005, the applicant shall retain the following rights related to concept plan:

a. *Preliminary plat submittal within two years required.* An application for a preliminary plat shall be submitted for approval within two years of the date of approval of a concept plan, unless otherwise provided in the PD district adopting ordinance. If a preliminary plat consistent with the concept plan is not submitted within such period, the concept plan shall expire.

b. *Expiration of an approved concept plan.* Expiration of an approved concept plan (based on subsection (b)(4)a of this section) shall result in suspension of the ability to submit a preliminary plat related to the original concept plan. A new concept plan must be submitted before the development process can continue.

c. *Expiration of an approved preliminary plat.*

1. The expiration of an approved preliminary plat shall be governed by the provisions of the city's subdivision ordinance as provided in chapter 40

2. If a required development application (e.g., preliminary plat, final plat, building permit) is submitted within the two-year period, but such development application subsequently expires, the associated concept plan shall also expire.

(5) *Ability to retain the rights to the PD project.* In conformance with V.T.C.A., Local Government Code § 245.005, the applicant shall retain the following rights related to a proposed planned development following submittal and approved of a concept plan.

a. *Ability to submit applications for five years.* The applicant shall retain the ability to submit a new concept plan for a period of five years following the original approval of the concept plan. Such new concept plan may only be for a substantially similar PD project. However, any such new concept plan shall adhere to any and all new standards and regulations that the city has adopted in relation to a concept plan and/or any other PD application requirements.

b. *Expiration of project in five years.* Any PD project for which no preliminary plat has been submitted for a period of five years following the approval of the related concept plan shall expire on the last day of that five-year period.

c. *Planning and zoning commission consideration.* After such five-year period has ended and the project expires, the planning and zoning commission shall consider whether the undeveloped land within a PD district should be changed to another zoning classification in accordance with the procedures for a zoning amendment pursuant to section 50-34. The commission thereafter shall recommend to the city council whether the right to submit a preliminary plat or other development application for the same PD project should be reinstated, or whether the property should be rezoned to another classification.

d. *City council consideration.* The commission's recommendation (as outlined in subsection (b)(5)c of this section) shall be considered by the city council in accordance with procedures for a zoning amendment pursuant to section 50-34. The council shall determine whether the right to submit the preliminary plat or other development application for the same PD District project should be reinstated, or whether the property should be rezoned to another classification. In making such determination, the city council shall consider the following factors:

1. Whether the PD district remains consistent with the comprehensive plan;

2. Whether the uses authorized in the PD district are compatible with existing and planned land uses adjacent to the site;

3. Whether there are extenuating circumstances justifying the failure to submit a preliminary plat or other development application during the applicable time period; and

4. Whether rezoning the property to another classification constitutes confiscation of a vested property right or deprives the owner of the economically viable use of the land.

e. *Council action.* Upon subsections (b)(5)d2 through 4 of this section occurring, the city council may take the following actions:

1. Reinstate the right to submit the preliminary plat or other development application for the original PD district project within a certain time period, subject to any conditions that may be appropriate to ensure that significant progress will be made toward development of land within the PD District;

2. Modify the PD district regulations applicable to the property; or

3. Repeal the PD district for the affected portions of the property and zone such property to another zoning district classification.

(c) *Vested rights request.*

(1) Any property owner who believes that he has obtained a vested right under V.T.C.A., Local Government Code ch. 245 shall submit to the city secretary a letter explaining the factual and legal bases upon which the property owner relies in his contention that he has a particular vested right and, consequently, is exempt or not subject to a particular city order, regulation, ordinance, rule, expiration date, or other properly adopted requirement (hereinafter referred to collectively as "regulations"). Such written submission shall include, at a minimum, the following:

a. The name, mailing address, phone number and fax number of the property owner (or the property owner's duly authorized agent);

b. Identification of the property for which the property owner claims a vested right;

c. Identification of the "project," as that term is defined in V.T.C.A., Local Government Code § 245.001(3);

d. Identification of the original application for the first permit in the series of permits required for the project, as described in V.T.C.A., Local Government Code §§ 245.001(1) and 245.002(a) and (b);

e. The date that the first permit in the series of permits required for the project was filed with the city;

f. A chronology of the history of the project, with special emphasis on facts establishing that the project was in progress on or commenced after September 1, 1997, as required by V.T.C.A., Local Government Code § 245.003;

g. Identification of all city regulations in effect at the time the original application for the permit was filed that the owner contends are vested and the owner contends controls the approval, disapproval, or conditional approval of an application for a permit, pursuant to V.T.C.A., Local Government Code § 245.002(a) and (b);

h. Identification of all city regulations that the property owner contends do not apply to the project due to the vested rights provided the property owner by V.T.C.A., Local Government Code ch. 245; and

i. Identification of all city regulations that the property owner contends would apply to the project that predate the regulations the property owner contends do not apply.

(2) If a property owner contends that certain city regulations do not apply to the project, the property owner is expected to identify, with particularity, all requirements that the property owner contends do not apply. Global references to a particular ordinance, or set of criteria, may

be deemed insufficient and the city may consider the request for a vested rights determination to be incomplete and, hence, not subject to a staff determination at that time.

(d) *Vested rights determination.* The city secretary shall promptly forward the owner's vested rights request pursuant to section 50-37(d), along with any supporting information or documentation provided along with the request, to the city manager and city attorney for their respective reviews. The city manager, after consultation with the city attorney, shall issue a final administrative determination of whether a vested right exists in relation to the project, and shall identify, with particularity, all claims for vested rights exists in relation to the project, and shall identify, with particularity, all claims for vested rights that have been granted and all claims for vested rights that have been denied. Prior to rendering his final determination, the city manager may request a pre-determination conference with the owner to discuss the owner's vested rights claim and to ensure that the nature of the claim is fully and completely understood by the city manager prior to a final determination being rendered.

(e) *Appeals to the board of adjustments.* If the property owner and/or the city council believes that the city manager's vested rights determination is in error, the property owner and/or the city council shall have the right to appeal such determination to the board of adjustments, which will have jurisdiction to hear and decide the appeal pursuant to this chapter and/or V.T.C.A., Local Government Code ch. 211. The property owner may also request the board of adjustments to grant a variance from the regulations at issue under the same standards governing variances for other matters, as set forth in this chapter and/or V.T.C.A., Local Government Code ch. 211. The property owner may also request the board of adjustments to grant a variance from the regulations at issue under the same standards governing variances for other matters, as set forth in this chapter and/or V.T.C.A., Local Government Code ch. 211.

(f) *Judicial review.* Should the property owner, any aggrieved person, and/or the city council be dissatisfied with the actions of the board of adjustments, they may avail themselves of all legal remedies to review the board of adjustments' decision as set forth in V.T.C.A., Local Government Code § 211.011.

(g) *Binding determination.* The city manager's final determination, if not timely appealed to the board of adjustments, shall be immediately filed in the city's files related to the project and the determination shall be considered binding upon the city and the property owner for the duration of the project. Similarly, any decision by the board of adjustments regarding a vested right claim, if not timely appealed pursuant to V.T.C.A., Local Government Code § 211.011, shall be filed in the city's files related to the project and the determination shall be considered binding upon the city and the property owner for the duration of the project. Notwithstanding the binding nature of the city manager's final determination and any ruling by the board of adjustments, the city and the property owner may, at any time, enter into a development agreement that, to the extent authorized by law, modifies the final determination and the applicable development regulations to be applied to the project.

(Ord. No. 2008-01, § 48, 2-4-2008)

Secs. 50-38—50-62. Reserved.

ARTICLE III. DISTRICT REGULATIONS

Sec. 50-63. Zoning district map.

Sec. 50-64. Zoning district boundaries.

Sec. 50-65. Compliance required and applications of regulations.

Sec. 50-66. Zoning upon annexation.

Sec. 50-67. Zoning districts established.

Sec. 50-68. Agricultural District (AG).

Sec. 50-69. Single-Family Estate Residential District (SF-20-E).

Sec. 50-70. Single-Family Residential District (SF-9).

Sec. 50-71. Single-Family Residential District (SF-6).

Sec. 50-72. Duplex (Two-Family) Residential District (D).

Sec. 50-73. Multifamily Residential District (MF).

Sec. 50-74. Manufactured Home Park District (MHP).

Sec. 50-75. Office District (O).

Sec. 50-76. General Retail District (GR).

Sec. 50-77. Commercial District (C).

Sec. 50-78. Light Industrial District (LI).

Sec. 50-79. Old Town and Mixed-Use District (OT and MU).

Sec. 50-80. Planned Development District (PD).

Sec. 50-81. Conditional Use Permit (CUP).

Sec. 50-82. Use regulations (charts).

Sec. 50-83. Summary of area regulations by district.

Secs. 50-84—50-111. Reserved.

Sec. 50-63. Zoning district map.

(a) The city is hereby divided into zones, or districts, and the boundaries of zoning districts set out in this article are delineated upon the zoning district map of the city, which may also be cited as the zoning map, said map being adopted as a part of this chapter as fully as if the same were set forth herein in detail.

(b) One original of the zoning district map shall be filed in the office of the city secretary and labeled as "Official Zoning Map of the city, Texas—Ordinance No. 2008-01." This copy shall be the original zoning district map adopted with this chapter and shall bear the signature of the mayor, attested by the city secretary, and shall bear the seal of the city under the following words: "This is to certify that this is the Official Zoning Map referred to in Section 3 of the Zoning Ordinance, Ordinance No. 2008-01 of the City of Tomball, Texas, adopted on the 4th day of February, 2008." This copy shall not be changed in any manner. In case of any question, this copy, together with amending ordinances, shall be controlling.

(c) A copy of the official zoning district map shall be placed in the office of the city manager or his designee. The map copy shall be used for reference and shall be maintained up to date by posting thereon all subsequent amendments. Any changes or amendments made to the zoning district boundaries shall be made on the map copy after the amendment has been approved by the city council in accordance with section 50-34. Each entry for a zoning map amendment shall include an ordinance number that references the zoning ordinance amendment.

(d) Reproductions for informational purposes may be made of the official zoning district map or this copy in print version or digitally by electronic files, computer disks or on the web, provided all reproductions are clearly labeled as such with a "Current as of _____/_____/_____" date indication. A disclaimer should also be provided that the actual zoning can only be verified by contact with the city and review of the official map.

(e) In the event that the official zoning map becomes damaged, destroyed, lost or difficult to interpret due to age, exposure, or the nature or number of changes or additions, the city council may adopt, by ordinance following a public hearing, a new official zoning map which shall replace and supersede the prior zoning map, but which shall not, in effect, amend or otherwise change the original official zoning map or any subsequent amendment thereto. The new official zoning map shall bear the signature of the mayor, attested by the city secretary, and shall bear the seal of the city under the following words: "This is to certify that this Official Zoning Map supersedes and replaces the original Official Zoning Map referred to in Section 3 of the Zoning Ordinance, Ordinance No. 2008-01 of the City of Tomball, Texas, adopted on the 4th day of February, 2008." Unless the prior official zoning map has been lost or has been totally destroyed, the prior map or any significant parts thereof remaining shall be preserved, together with all available records pertaining to its adoption or amendment.

(Ord. No. 2008-01, § 3, 2-4-2008)

Sec. 50-64. Zoning district boundaries.

The zoning district boundary lines shown on the zoning district map are usually along streets, alleys, property lines, or extensions thereof. Where uncertainty exists as to the boundaries of districts as shown on the zoning district map, the following rules shall apply:

(1) Boundaries shown as approximately following the centerlines of streets, highways or alleys shall be construed to follow such centerlines.

(2) Boundaries shown as approximately following platted lot lines shall be construed as following such lot lines.

(3) Boundaries shown as approximately following city limits shall be construed as following such city limits.

(4) Boundaries shown as following railroad lines shall be construed to be located along the centerline of the railroad right-of-way lines.

(5) Boundaries shown as approximately following the centerlines of streams, rivers, creeks, canals, bodies of water, or drainageways shall be construed to follow such centerlines, and in the event of change in any such centerlines shall be construed to move with such centerlines.

(6) Boundaries shown as parallel to, or extensions of, features described in subsections (1) through (5) of this section shall be so construed. Distances not specifically indicated on the zoning district map shall be determined by the approximate scale of the map and verified by a survey.

(7) Whenever any street, alley or other public way is vacated by official action of the city council, or whenever such area is franchised for building purposes, the zoning district line adjoining each side of such street, alley or other public way shall be automatically extended to the centerline of such vacated street, alley or public way (or to the new property ownership boundary line, if it is not determined to be at the former centerline) and all areas so involved shall then and henceforth be subject to all regulations of the extended districts.

(8) The zoning classification applied to a tract of land adjacent to a street shall extend to the centerline of the street unless, as a condition of zoning approval, it is stated that the zoning classification shall not apply to the street.

(9) Where physical features on the ground are at variance with information shown on the zoning district map, or if there arises a question as to how or whether a parcel of property is zoned and such question cannot be resolved by the application of subsections (1) through (8) of this section, then the board of adjustments shall interpret the zoning district boundaries.

(10) If the zoning of property is invalidated by a judgment of a court of competent jurisdiction, the property shall be considered classified as AG Agricultural District in the same manner as provided for newly annexed territory.

(11) For legal descriptions, refer to the adopting ordinances for each particular rezoning change.

(Ord. No. 2008-01, § 4, 2-4-2008)

Sec. 50-65. Compliance required and applications of regulations.

(a) All land, buildings, structures or appurtenances thereon located within the city, which are hereafter occupied, used, constructed, erected, removed, placed, demolished, and/or converted shall be occupied, used, erected, altered, removed, placed, demolished and/or converted in conformance with the zoning regulations prescribed for the zoning district in which such land or building is located, as hereinafter provided, or such shall be subject to penalties as per section 50-5. All of the standards and regulations prescribed herein shall be considered as the minimum requirement unless explicitly stated otherwise.

(b) No uses shall be allowed which are prohibited by state or federal law or which operate in excess of state or federal environmental, pollution or performance standards as determined by the U.S. Environmental Protection Agency (EPA), Texas State Department of Health (TSDH), Texas Commission of Environmental Quality (TCEQ), Federal Aviation Administration (FAA), Federal Communications Commission (FCC), or any other applicable state or federal agency, as the case may be.

(c) No lot upon which a building has been erected shall later be so reduced in area that the setbacks, yards and/or open spaces shall be smaller than those required by this chapter, nor shall a part of a yard or other open space required by this chapter for any building/lot be included as a part of a yard or other open space similarly required for another building/lot.

(d) Unless otherwise provided herein, no building shall hereafter be erected or altered:

(1) To have more narrow or smaller front, side or rear yards than those required by this chapter;

(2) To exceed the maximum height allowed by this chapter;

(3) To occupy a greater percentage of lot area than allowed by this chapter; or

(4) To accommodate or house a greater number of families than is specified within this chapter for the zoning district in which such building is located.

(Ord. No. 2008-01, § 5, 2-4-2008)

Sec. 50-66. Zoning upon annexation.

(a) Proceedings to establish zoning may be undertaken concurrently with annexation procedures (i.e., notified at the same time, public hearings scheduled at the same time as annexation, etc.), however, zoning approval and formal adoption of the ordinance establishing zoning must occur after annexation approval and adoption have occurred, and as a separate and distinct action by the city council. For any period of time following official annexation by the city until a zoning action has been officially adopted to zone the land, the interim zoning of the land shall be considered to be agricultural (AG), and all zoning and development regulations of the AG zoning district shall be adhered to with respect to the development and use of the land.

(b) The initial zoning of a land parcel, whether by initiation of the landowner or by initiation of the city, must meet the requirements for notification and public hearings as set forth in section 50-34 and all other applicable state laws.

(c) The owner of land to be annexed may submit an application for zoning the property simultaneously with submission of the petition for annexation, but no such annexation application may be made conditioned upon the approval of any particular zoning classification.

(d) Within an area classified as AG Agricultural:

(1) No permit for the construction of a building or use of land shall be issued by the building official, or his designee, other than a permit which will allow the construction of a building or use permitted in the AG Agricultural District, unless and until such territory has been classified in a zoning district other than the AG Agricultural District by the city council in the manner prescribed by section 50-34, except as provided in subsection (b) of this section.

(2) If plans and preparations for developing a property for a use other than those specified in the AG Agricultural District were already in progress prior to annexation of the property into the city, in accordance with section 50-37, then the city council may authorize construction of the project by a majority vote. Application of this subsection is contingent upon the following:

a. The applicant must be able to demonstrate that plans and other preparations for developing the property commenced prior to (i.e., were already in progress at the time of) annexation into the city.

b. Existing land uses shall be allowed to continue in conformance with V.T.C.A., Local Government Code ch. 43 and section 50-37

(e) In its deliberations concerning authorization to proceed with construction of a project which meets the criteria in subsections (a) through (d) of this section, the city council shall take into consideration the appropriate land use for the area as shown on the city's future land use plan. Upon approval by the city council, the city manager or his designee shall notify the building official or his designee of such approval.

(Ord. No. 2008-01, § 6, 2-4-2008)

Sec. 50-67. Zoning districts established.

(a) The city is hereby divided into the following zoning districts. The use, height, area regulations, and other standards, as set out in this chapter apply to each district. The districts established herein shall be known as:

BASE DISTRICTS

Abbreviated Designation	Zoning District Name
AG	Agricultural
SF-20-E	Single-Family Estate Residential-20 (minimum 20,000-square-foot lots)
SF-9	Single-Family Residential-9 (minimum 9,000-square-foot lots)
SF-6	Single-Family Residential-6 (minimum 6,000-square-foot lots)
D	Duplex (Two-Family) Residential
MF	Multifamily Residential (apartments)
MHP	Manufactured Home Park
O	Office

GR	General Retail
C	Commercial
LI	Light Industrial

SPECIAL DISTRICTS

Abbreviated Designation	Zoning District Name
OT and MU	Old Town and Mixed-Use District
PD	Planned Development
CUP	Conditional Use Permit

(b) A summary of the area regulations for the foregoing zoning districts is included section 50-83

(c) Certain terms and definitions used within this chapter can be found in the definitions section 50-2

(d) Other requirements are contained within article IV of this chapter.

(Ord. No. 2008-01, § 13, 2-4-2008)

Sec. 50-68. Agricultural District (AG).

(a) *General purpose and description.* The AG Agricultural District is designed to permit the use of land for the ranching, propagation and cultivation of crops and similar uses of vacant land. Single-family uses on large lots are also appropriate for this district. Territory that has been newly annexed into the city may be initially zoned agricultural, and the district is considered a temporary holding zone until permanent zoning is approved. It is anticipated that agricultural zoned land will ultimately be rezoned to another zoning classification for its intended use in accordance with the comprehensive plan in the future. Zoning to the final, permanent classification will be considered an initial rezoning for the purposes of notice and protest requirements. The AG Agricultural District is also appropriate for areas where utilities or city services are not readily available.

(b) *Permitted uses.*

(1) Those uses listed for the AG Agricultural District in the use charts (section 50-82) as "P" or "C" are authorized uses permitted by right or conditionally permitted uses, respectively.

(2) Livestock and domesticated animals shall only be allowed in accordance with the adopted ordinances of the city.

(3) One manufactured home may be utilized as a temporary construction living quarters by the owner of the property, so long as a valid permit exists and construction is proceeding. In

addition, non-occupied storage buildings may be allowed without a main structure for as long as a valid permit for construction of a main structure is valid.

(c) *Height regulations.* The maximum height in the AG district shall be:

(1) Three stories, and not to exceed 45 feet, for the main building/house.

(2) Forty-five feet for agricultural structures (e.g., barns, silos, water towers, etc.), provided they are no closer than 100 feet from any residential structure on the premises, and they are set back at least 100 feet or three times their height (whichever is greater) from any front, side or rear property line.

(3) Twenty-five feet for other accessory buildings, including detached garage, garden shed, accessory dwelling units, etc.

(d) *Area regulations.*

(1) Size of lots.

a. Minimum lot area: One acre (i.e., 43,560 square feet).

b. Minimum lot width: 100 feet.

c. Minimum lot depth: 200 feet.

(2) Size of yard.

a. Minimum front yard: 60 feet.

b. Minimum side yard: 30 feet; provided, however, a detached single-family dwelling and private garage may be located not less than 15 feet from the side property line or not less than 25 feet from the side property line adjacent to an arterial street, whichever is greater.

c. Minimum rear yard: 25 feet for the main building and any accessory buildings.

(3) *Maximum coverage lot.* Maximum lot coverage is 40 percent for main buildings and accessory buildings.

(4) *Minimum floor area.* Minimum floor area per dwelling unit is 1,600 square feet of heated and/or air-conditioned floor area.

Illustration 50-68-1: Lot and yard regulations for the Agricultural District

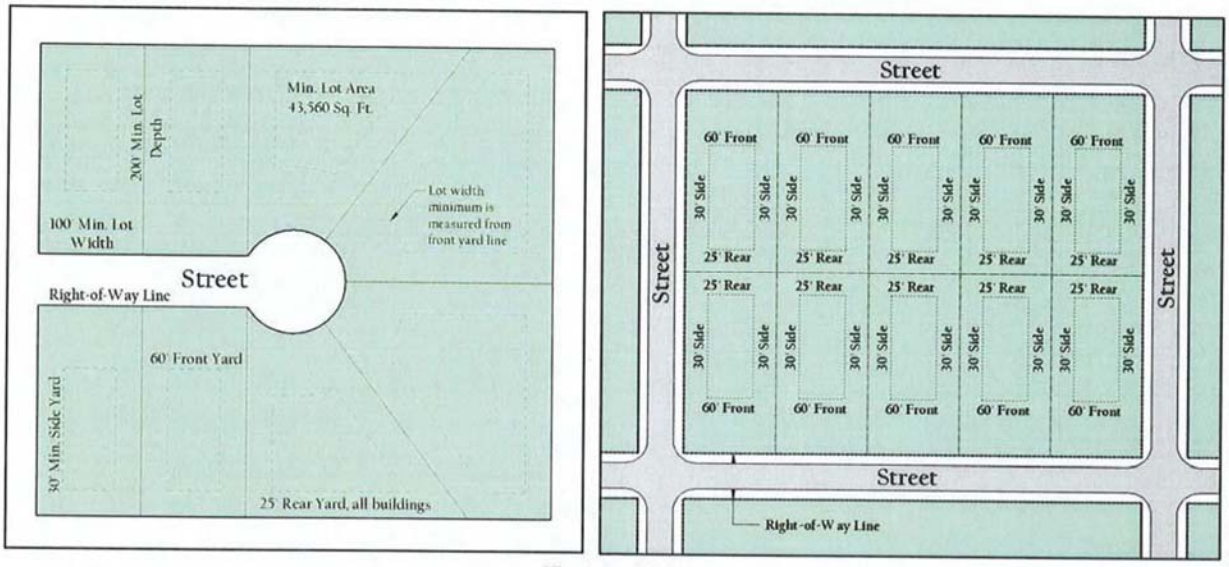
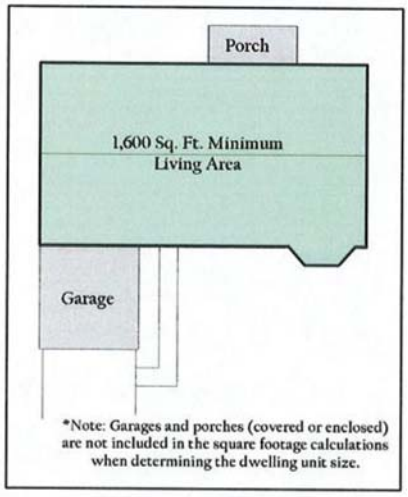


Illustration 50-68-2: Floor area for the Agricultural District



(Ord. No. 2008-01, § 14, 2-4-2008; Ord. No. 2009-31, § 2, 11-2-2009)

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Sec. 50-69. Single-Family Estate Residential District (SF-20-E).

(a) *General purpose and description.* The SF-20-E Single-Family Residential District is intended to provide for development of primarily very low-density detached, single-family residences on lots of not less than 20,000 square feet in size, churches, schools and public parks. It is intended for large lot subdivisions and also for the more rural type residential areas that don't meet the AG Agriculture District requirements but may want to have additional accessory buildings and animals.

(b) *Permitted uses.* Those uses listed for the SF-20-E Single Family Residential District in the use charts (section 50-82) as "P" or "C" are authorized uses permitted by right or conditionally permitted uses, respectively.

(c) *Height regulations.* The maximum height in the SF-20E district shall be:

(1) Three stories, and not to exceed 45 feet, for the main building/house.

(2) Two stories for other accessory buildings, including detached garage, garden shed, detached accessory dwelling units, gazebo, etc.

(d) *Area regulations.*

(1) *Size of lots.*

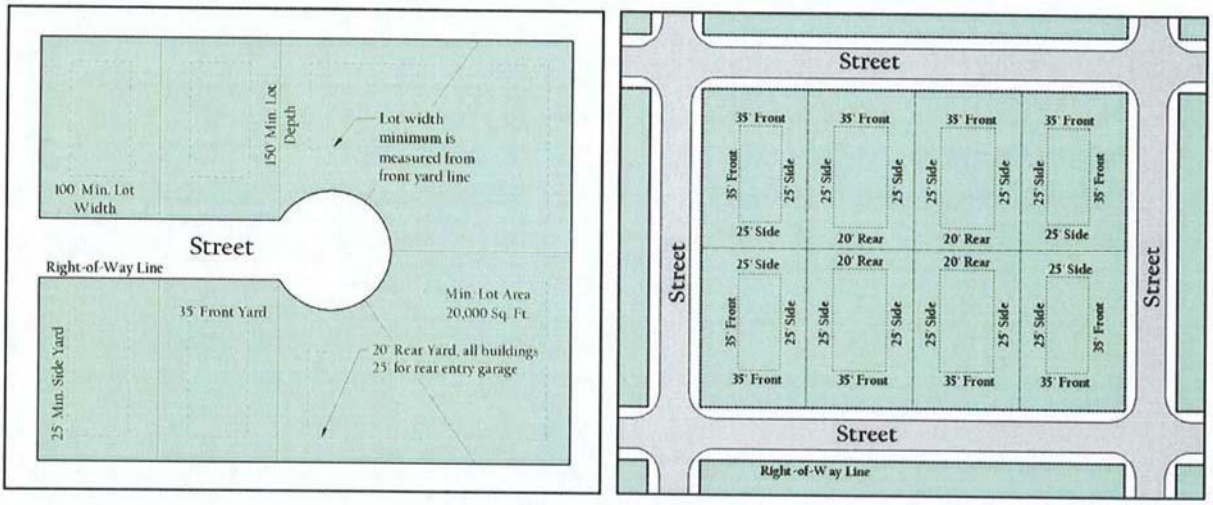
a. Minimum lot area: 20,000 square feet.

b. Minimum lot width: 100 feet. Radial lots shall have a minimum width of 100 feet at and for a distance of 30 feet behind the front yard/building line. No lot shall be created that has a front yard with less than 30 feet of frontage on the front street.

c. Minimum lot depth: 150 feet.

d. Nonconforming lots: where a lawfully existing lot having less area, depth, or width than required in this section existed in separate ownership on the effective date of the ordinance from which this chapter is derived, the foregoing regulations relating to the size of such lot shall not prohibit the erection of a single-family dwelling thereon.

Illustration 50-69-1: Lot and yard regulations for the SF-20-E District



(2) *Size of yards.*

a. Minimum front yard: 35 feet; where lots have double frontage, running through from one street to another, the required front yard shall be provided on both streets.

b. Minimum side yard: 25 feet.

c. Minimum rear yard: 20 feet for the main building and any accessory buildings; 25 feet for rear garage entry.

(3) *Minimum floor area.* Minimum floor area per dwelling unit is 1,600 square feet of heated and/or air-conditioned floor area.

(Ord. No. 2008-01, § 15, 2-4-2008)

Sec. 50-70. Single-Family Residential District (SF-9).

(a) *General purpose and description.* The SF-9 Single-Family Residential District is intended to provide for development of primarily low-density detached, single-family residences on lots of not less than 9,000 square feet in size, churches, schools and public parks in logical neighborhood units.

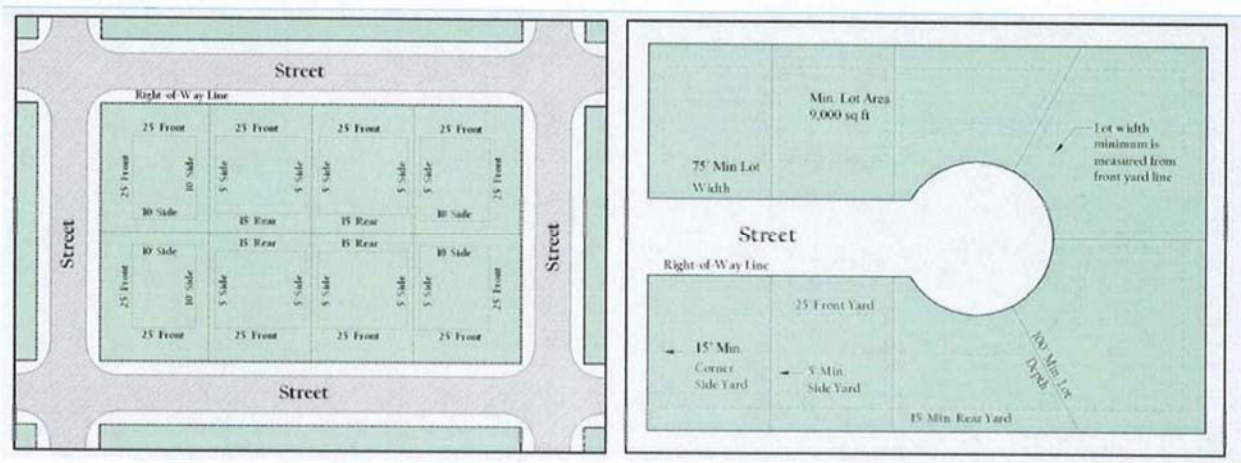
(b) *Permitted uses.* Those uses listed for the SF-9 Single-Family Residential District in the use charts (section 50-82) as "P" or "C" are authorized uses permitted by right or conditionally permitted uses, respectively.

(c) *Height regulations.* The maximum height in the SF-9 district shall be:

(1) Two stories, not to exceed 35 feet, for the main building/house.

(2) Two stories for other accessory buildings, including detached garage, garden shed, gazebo, etc.

Illustration 50-70-1



(d) *Area regulations.*

(1) *Size of lots.*

a. Minimum lot area: 9,000 square feet.

b. Minimum lot width: 75 feet. Retail lots shall have a minimum width of 80 feet at and for a distance of 30 feet behind the front yard/building line. No lot shall be created that has a front yard with less than 30 feet of frontage on the front street.

c. Minimum lot depth: 100 feet.

d. Nonconforming lots. Where a lawfully existing lot having less area, depth, or width than required in this section existed in separate ownership on the effective date of the ordinance from which this chapter is derived, the foregoing regulations relating to the size of such lot shall not prohibit the erection of a single-family dwelling thereon.

(2) *Size of yards.*

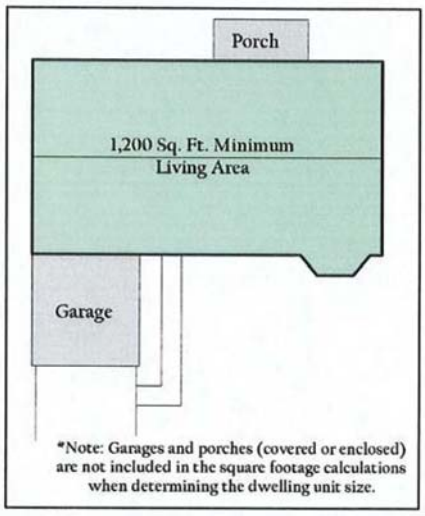
a. Minimum front yard: 25 feet; where lots have double frontage, running through from one street to another, the required front yard shall be provided on both streets. Where a lot faces a designated arterial street, the front yard shall be a minimum of 35 feet.

b. Minimum side yard: five feet. The minimum side yard of a corner lot adjacent to a street shall not be less than 15 feet, except that where a lot sides on a designated arterial street, such side yard shall not be less than 25 feet.

c. Minimum rear yard: 15 feet. The rear yard where lots back on a designated arterial street shall not be less than 25 feet. However, lots backing up to a 20-foot alley shall have a five foot minimum rear yard and abutting a 15 foot alley shall have a 7.5-foot minimum rear yard.

d. Encroachment by building eaves and air conditioning units: building eaves and air conditioning compressors may encroach not more than three feet beyond building lines into the required rear and side yard on lots created by subdivision plats for single-family residential use duly approved by the city and recorded with the county clerk of either county, as applicable, on or before November 1, 1999.

Illustration 50-70-2: Floor Area for the SF-9 District



(3) *Maximum lot coverage.* Maximum lot coverage is 40 percent, including main buildings and accessory buildings.

(4) *Minimum floor area.* Minimum floor area per dwelling unit is 1,200 square feet of heated and/or air-conditioned floor area.

(Ord. No. 2008-01, § 16, 2-4-2008)

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Sec. 50-71. Single-Family Residential District (SF-6).

(a) *General purpose and description.* The SF-6 Single-Family Residential District is intended to provide for development of primarily low-density detached, single-family residences on lots of not less than 6,000 square feet in size, churches, schools and public parks in logical neighborhood units.

(b) *Permitted uses.* Those uses listed for the SF-6 Single-Family Residential District in the use charts (section 50-82) as "P" or "C" are authorized uses permitted by right or conditionally permitted uses, respectively.

(c) *Height regulations.* The maximum height in the SF-6 district shall be:

(1) Two stories, not to exceed 35 feet, for the main building/house.

(2) One story for other accessory buildings, including detached garage, garden shed, gazebo, etc.

(d) *Area regulations.*

(1) *Size of lots.*

a. Minimum lot area: 6,000 square feet.

b. Minimum lot width: 50 feet. Retail lots shall have a minimum width of 60 feet at and for a distance of 30 feet behind the front yard/building line. No lot shall be created that has a front yard with less than 30 feet of frontage on the front street.

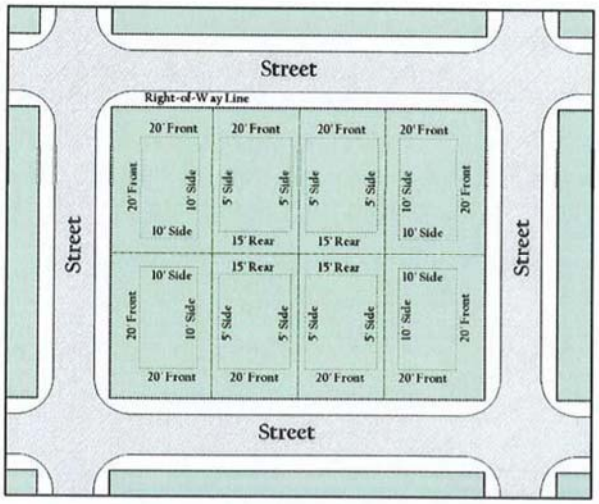
c. Minimum lot depth: 100 feet.

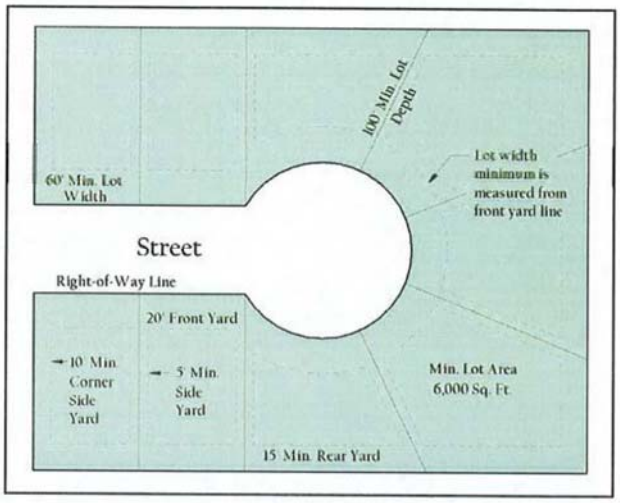
d. Nonconforming lots: where a lawfully existing lot having less area, depth, or width than required in this section existed in separate ownership on the effective date of the ordinance from which this chapter is derived, the foregoing regulations relating to the size of such lot shall not prohibit the erection of a single-family dwelling thereon.

(2) *Size of yards.*

a. Minimum front yard: 20 feet; where lots have double frontage, running through from one street to another, the required front yard shall be provided on both streets. Where a lot faces a designated arterial street, the front yard shall be a minimum of 35 feet.

Illustration 50-71-1: Lot and yard regulations for the SF-6 District



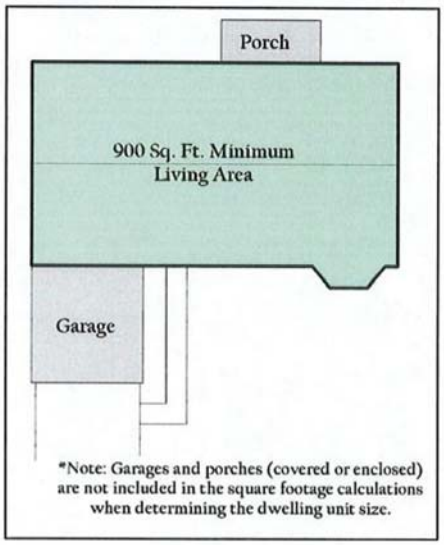


b. Minimum side yard: five feet. The minimum side yard of a corner lot adjacent to a street shall not be less than 15 feet, except that where a lot sides on a designated arterial street, such side yard shall not be less than 25 feet.

c. Minimum rear yard: 15 feet. The minimum rear yard where lots back on a designated arterial street shall not be less than 25 feet. However, lots backing up to a 20-foot alley shall have a 5 foot minimum rear yard and abutting a 15-foot alley shall have a 7.5-foot minimum rear yard.

d. Encroachment by building eaves and air conditioning units: building eaves and air conditioning compressors may encroach not more than three feet beyond building lines into the required rear and side yard on lots created by subdivision plats for single-family residential use duly approved by the city and recorded with the county clerk of either county, as applicable, on or before November 1, 1999.

Illustration 50-71-2: Floor area for the SF-6 District



(3) *Maximum lot coverage.* Maximum lot coverage is 45 percent including main buildings and accessory buildings.

(4) *Minimum floor area.* Minimum floor area per dwelling unit is 900 square feet of heated and/or air-conditioned floor area.

(Ord. No. 2008-01, § 17, 2-4-2008)

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Sec. 50-72. Duplex (Two-Family) Residential District (D).

(a) *General purpose and description.* The D Duplex (Two-Family) Residential District is intended to promote stable, quality multiple-occupancy residential development at slightly increased densities. Individual ownership of each side of the duplex (two-family) units is encouraged, but must meet all platting, building codes and have separate utilities. This district is typically used as a buffer or transition district between lower density residential areas and higher density or nonresidential areas or major thoroughfares.

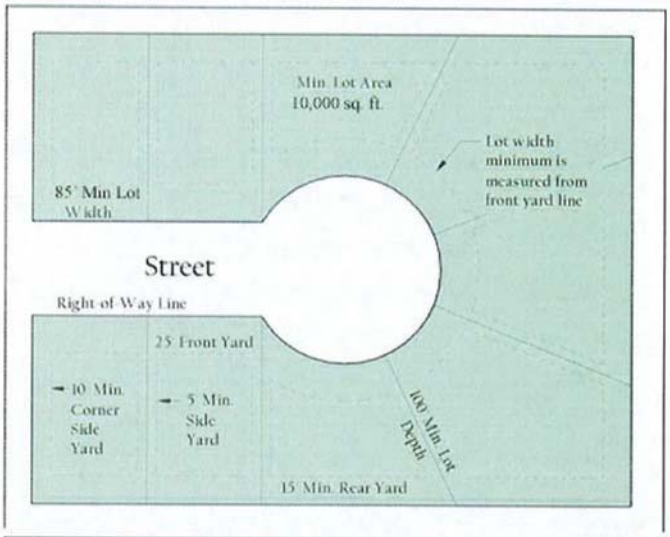
(b) *Permitted uses.* Those uses listed for the D Duplex (Two-Family) Residential District in the use charts (section 50-82) as "P" or "C" are authorized uses permitted by right or conditionally permitted uses, respectively.

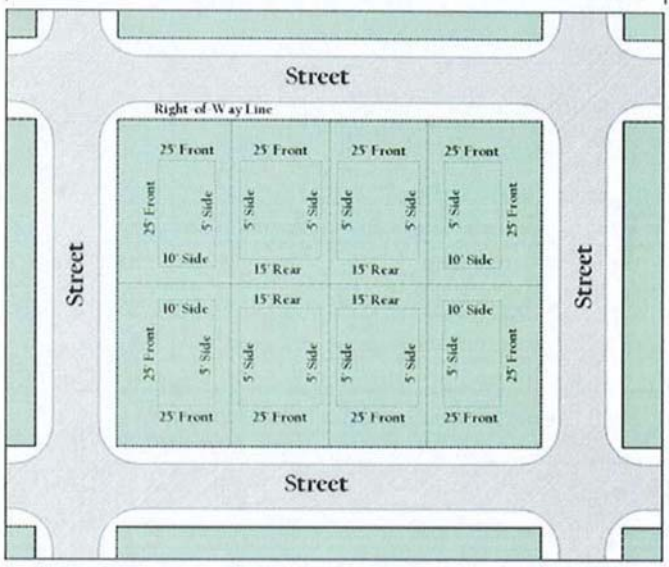
(c) *Height regulations.* The maximum height in the D Duplex (Two-Family) Residential District shall be:

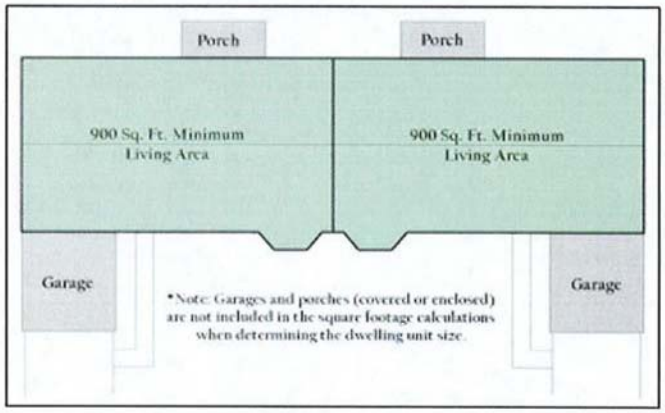
(1) Two stories, not to exceed 36 feet, for the main building/house.

(2) One story for other accessory buildings, including detached garage, garden shed, gazebo, etc.

Illustration 50-72-1: Lot, yard and floor area regulations for the Duplex District







(d) *Area regulations.*

(1) *Size of lots for D Duplex (Two Family) Residential District homes.*

a. Minimum lot area is 10,200 square feet for a duplex (two-family) lot or 6,000 square feet each for duplex townhomes (no more than two attached) when each side is sold off separately and each unit is located on its own platted lot with separate utilities. The buildings, while attached, are separately owned with a common wall meeting the fire and separation requirements of the adopted fire and building codes.

b. Minimum lot width is 85 feet. Duplex townhomes (no more than two attached) sold off on separate lots shall have a minimum of 45 feet of width each. Radial lots shall have a minimum width of 85 feet and 45 feet respectively at and for a distance of 30 feet behind the front yard/building line. No lot for duplexes shall be created that has a front yard with less than 60 feet of frontage on the front street or 30 feet per townhome.

c. Minimum lot depth is 100 feet.

(2) *Size of yards for D Duplex (Two Family) Residential District homes.*

a. Minimum front yard: 25 feet. Where a lot faces a designated arterial street, the front yard shall be a minimum of 35 feet.

b. Minimum side yard: five feet. The minimum side yard of a corner lot adjacent to a street shall not be less than 15 feet, except that where a lot sides on a designated arterial street, such side yard shall not be less than 25 feet. On duplex townhomes (no more than two attached) with separate ownership of lots, there shall be no setback from the one common lot line, provided all other requirements including the definition have been met and there are no more than two units sharing a lot line.

c. Minimum rear yard: 15 feet. The minimum rear yard where lots back on a designated arterial street shall not be less than 25 feet. However, lots backing up to a 20 foot alley shall have a five foot minimum rear yard and abutting a 15 foot alley shall have a 7.5 foot minimum rear yard.

d. Encroachment by building eaves and air conditioning units: building eaves and air conditioning compressors may encroach not more than three feet beyond building lines into the required rear and side yard on lots created by subdivision plats for single-family residential use duly approved by the city and recorded with the county clerk of either county, as applicable, on or before November 1, 1999.

(3) *Maximum lot coverage.* Maximum lot coverage for D Duplex (Two-Family) Residential District homes is 45 percent by main buildings and accessory buildings.

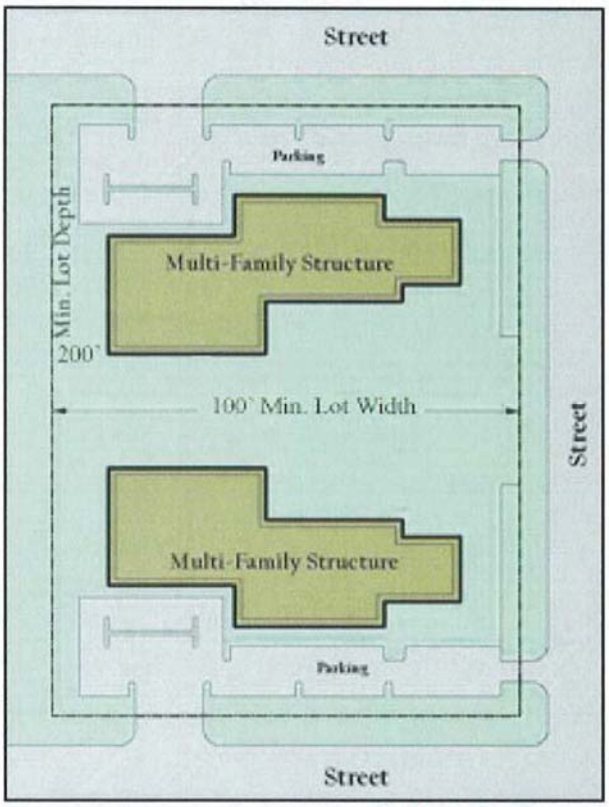
(4) *Minimum floor area.* Minimum floor area per dwelling unit for D Duplex (Two-Family) Residential District homes is 900 square feet of heated and/or air-conditioned floor area per unit.

(Ord. No. 2008-01, § 20, 2-4-2008)

Sec. 50-73. Multifamily Residential District (MF).

(a) *General purpose and description.* The MF Multifamily Residential District is an attached residential district intended to provide the highest residential density of up to 20 dwelling units per acre. With the addition of carports in accordance with section 50-112(c), a density of up to 26 units to the acre could be provided. The principal permitted land uses will include low- and mid-rise multifamily dwellings and garden apartments. Recreational, religious, health and educational uses normally located to service residential areas are also permitted in this district. This district should be located adjacent to a major thoroughfare and serve as a buffer between nonresidential development or heavy automobile traffic and medium- or low-density residential development.

Illustration 50-73-1: Area regulation for multiple-family structures



(b) *Permitted uses.* Those uses listed for the MF Multifamily Residential District in the use charts (section 50-82) as "P" or "C" are authorized uses permitted by right or conditionally permitted uses, respectively.

(c) *Height regulations.* The maximum height in the MF district shall be:

(1) Three stories or 45 feet, whichever is less for the main buildings.

(2) One story for other accessory buildings, including detached garages, carports, clubhouses, gazebos, mail kiosks, laundry rooms, etc.

(3) Refer to side and rear setbacks related to height.

(d) *Area regulations.*

(1) *Size of lots.*

a. Minimum lot area: 1,816 square feet per dwelling unit, not to exceed 20 dwelling units per acre (calculated on gross acreage), except with density bonuses up to 26 dwelling units per acre for covered parking as described in off-street parking, section 50-112(c). The minimum lot (i.e., project) size shall be ten acres.

b. Minimum lot width: 120 feet.

c. Minimum lot depth: 200 feet.

d. Special exception: if a property was platted or permitted for MF Multifamily Residential District prior to the effective date of the ordinance from which this chapter is derived, then it can remain its original size and configuration and does not have to meet the minimum project size, lot width or lot depth stated in this section. The property shall conform to all other MF Multifamily Residential District development standards herein, unless the building setbacks shown on a recorded plat vary from those contained herein, in which case the platted setbacks shall prevail unless a replat modifies same.

(2) *Size of yards.* The following minimum yards shall be required for lots or tracts containing multifamily dwelling buildings, measured from the applicable property line; provided, however if the lot is encumbered with a street easement, such yard shall be measured from the boundary line of such street easement.

a. Minimum front yard: 25 feet. Where a lot faces a designated arterial street, the front yard shall be a minimum of 35 feet.

b. Minimum side yard:

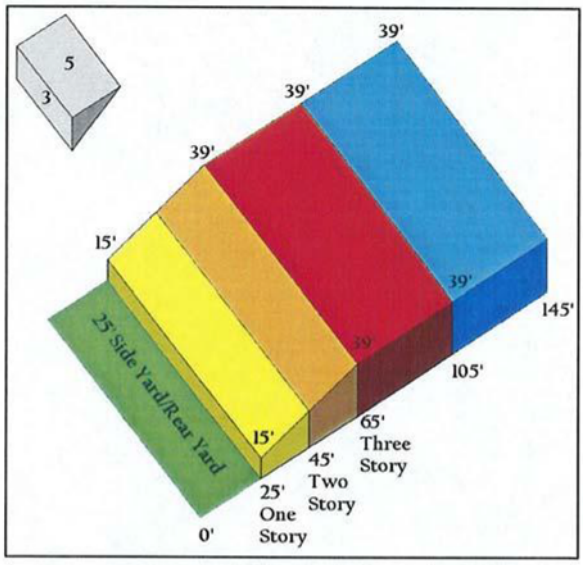
1. Interior: five feet.

2. Interior adjacent to property zoned for or restricted by a duly recorded subdivision plat for single-family residential purposes is 25 feet. Setbacks shall be measured at a ratio of five feet in horizontal setback distance for every three feet of building height as shown in Illustration 50-73-2. Setback measurements shall be calculated by story.

3. Side yard adjacent to a street: 15 feet.

4. Side yard adjacent to a designated arterial: 25 feet.

Illustration 50-73-2: Setback and height relationship for multiple-family structures]



c. Minimum rear yard: 15 feet. If adjacent to a single-family, duplex (two family), patio home or single-family attached district, then rear setbacks (within which parking is permitted) shall be 60 feet, unless separated by an alley in which case the setback shall be 20 feet.

d. Zero lot line exception: notwithstanding the foregoing, except where an interior side yard or rear yard is adjacent to property zoned for or restricted by a duly recorded subdivision plat to, or primarily used for, single-family residential purposes, there shall be no required interior side or rear building line if the wall adjoining such interior side or rear lot line, as applicable, is constructed with materials giving it a four-hour firewall rating. Yards adjacent to street or alley rights-of-way are excluded from this provision.

e. Windows: all multiple-story buildings within a multifamily development complex shall be constructed so that there shall be no windows above the first floor on any sides which are within 100 feet of property zoned for single-family uses, existing residential platted lots or existing single-family residences.

f. Minimum building separation requirements:

1. One-story buildings: 15 feet for buildings without openings; 20 feet for buildings with openings.
2. Two-story buildings (or a two-story building adjacent to a one-story building): 20 feet for buildings without openings; 35 feet for buildings with openings.
3. Over two-story buildings (or an over two-story building adjacent to a one-or two-story building): 35 feet for buildings with or without openings, or as required by the adopted building code, whichever is greater.
4. Between a main building and an accessory building: ten feet, or as required by the adopted building code, whichever is greater.

(3) *Minimum floor area per dwelling unit.*

a. Efficiency unit: 500 square feet per unit.

b. One-bedroom unit: 725 square feet per unit.

c. Two or more bedroom unit: 800 square feet for the first two bedrooms, plus an additional 125 square feet for every bedroom over two (e.g., three-bedroom unit must have 925 square feet, etc.).

(4) *Maximum lot coverage.* Maximum lot coverage of 50 percent total, including main and accessory buildings, pools and ponds.

(5) *Green space; recreational areas.* A minimum of 50 percent of the gross platted area shall be open green space and common recreational areas. The minimum percentage of open space and common recreational areas may be reduced by the planning and zoning commission at the time of site plan approval to 20 percent of the gross platted area, provided the area is intensively landscaped with underground irrigation systems and continuous maintenance is provided for. The open green space and common recreational areas shall be areas not specifically designated or used as building sites for dwelling units, buildings sites for utility or storage buildings, parking lots, garages, streets or driveways within the multifamily development. The actual surface area of open green space, such as lawns and landscaping, and common recreational areas, such as swimming pools and surrounding paved deck, tennis courts, community rooms, saunas, and other recreational areas, shall be considered in calculating the minimum requirement for open green space and common recreational areas. Required buffer yards, except surfaced parking and driveways located within said buffer yards, if any, may be included in computing the minimum required area of green space and common recreational areas.

(6) *Screening.* In addition to the requirements in section 50-115, the following screening requirements shall apply to multifamily dwelling developments.

a. All refuse containers shall be screened.

b. A six-foot solid fence, wall, or other similar opaque screening device shall be constructed on the side or rear of any multifamily dwelling complex adjacent to a single-family zoned property.

(e) *Special requirements.*

(1) *Other types of residential development.* Single-family or duplex (two family) residential units constructed in this district shall conform to SF-6 or D district standards, respectively.

(2) *Fire easements accessible.* All points on the exterior facades of all buildings shall be within 150 feet of a dedicated fire lane easement (as measured by an unobstructed pathway or route for fire hoses).

(3) *Fire sprinkler system.* All multifamily developments shall be provided with a fire sprinkler system in accordance with all other city ordinances.

(4) *Walkways.* A four-foot-wide paved walkway shall connect the front door of each ground floor unit to a parking area. The minimum width of any sidewalk adjacent to head-in parking spaces shall be six feet to accommodate a two-foot bumper overhang for vehicles. Sidewalks of concrete cement or other masonry construction shall be provided between the dwelling units and all community facilities provided for residents in accordance with applicable city standards and specifications. All walks shall be lighted at night with a minimum intensity of two foot-candles' illumination.

(5) *Building length.* Buildings shall not exceed 200 feet in length.

(6) *Oversized parking areas.* Boats, campers, trailers and other recreational vehicles shall be prohibited unless oversize parking areas are provided and approved by the city. This parking area shall not be used to meet the minimum parking requirements and shall not be visible from a public street.

(7) *Signage—Address numbers.* All buildings containing residential units shall provide signage which clearly identifies the numbers (i.e., addresses) of the units within each building. Signage shall be visible from entrances into the complex and/or from vehicular drive aisles within the complex such that each individual unit is easy to locate by visitors, delivery persons, and/or emergency personnel.

(8) *Lighting.* All parking areas shall have appropriate lighting and shall be positioned such that lights are shielded and do not adversely impact adjacent residential areas.

(9) *Gated/secured entrances.* Gated/secured entrances shall be in accordance with the design standards for gated/secured entrances on private streets as adopted.

(10) *Streets or driveways.* Each multifamily dwelling complex shall have driveways constructed of concrete cement or hot mixed asphalt, shall be curbed and guttered in accordance with existing requirements of the city, and shall be at least 28 feet in width throughout. All driveways shall be lighted at night with a minimum intensity of two foot-candles' illumination.

(Ord. No. 2008-01, § 22, 2-4-2008)

Sec. 50-74. Manufactured Home Park District (MHP).

(a) *General purpose and description.* The MHP Manufactured Home Park District is a detached residential district establishing standards for the development of manufactured, HUD-Code manufactured home parks and subdivisions. A manufactured or mobile home park offers spaces for the placement of manufactured/mobile home units on a lease/rental basis or on a lot-for-sale basis. The MHP Manufactured Home Park District establishes area and design requirements for parks and subdivisions, as well as yard requirements for individual lots. Both parks and subdivisions provide open space and recreational areas appropriate for the acreage and number of units contained.

(b) *Permitted uses.* Those uses listed for the MHP Manufactured Home Park District in the use charts (section 50-82) as "P" or "C" are authorized uses permitted by right or conditionally permitted uses, respectively.

(c) *Area regulations.*

(1) *Size of spaces.*

a. Minimum lot area: 4,000 square feet per unit.

b. Minimum lot width: 40 feet.

c. Minimum lot depth: 80 feet.

(2) *Size of yards.*

a. Minimum front yard: 20 feet from a dedicated street; ten feet from any private street or drive.

b. Minimum side yard: ten feet; 20 feet between units; 20 feet from zoning district boundary line; 15 feet for corner lots.

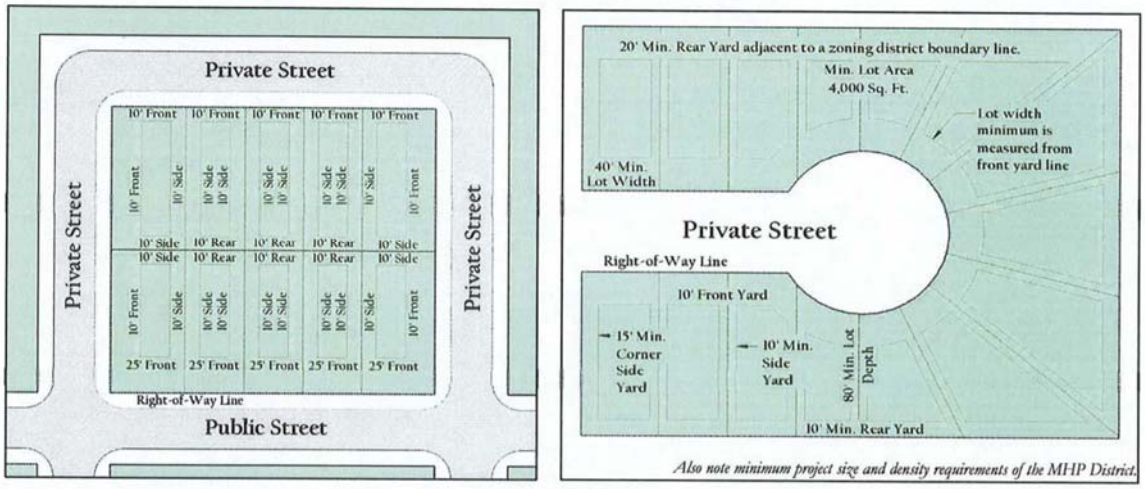
c. Minimum rear yard: ten feet; 20 feet from any zoning district boundary line.

d. If a garage is provided, the entry (i.e., door) side of the garage shall have a 20-foot setback as measured from any property or street right-of-way line.

(3) *Maximum floor area.* Minimum floor area per dwelling unit is 750 square feet.

(4) *Maximum lot coverage.* Maximum lot coverage is 50 percent for main building/unit plus any accessory buildings.

Illustration 50-74-1: Lot and yard regulations for the MHP District]



(5) *Area for manufactured home parks.* Minimum project area is 20 acres; maximum project area 35 acres.

(6) *Density for manufactured home parks.* No manufactured home park shall provide less than 20 spaces, and there shall be a maximum of ten spaces per gross acre within the park.

(7) *Maximum height limit.*

a. Two stories, not to exceed 35 feet, for the main building/house.

b. One story for other accessory buildings, including detached garages, carports, management offices, clubhouses, gazebos, mail kiosks, etc.

(d) *General requirements for manufactured/mobile home parks.*

(1) *Access.* Each manufactured/mobile home community shall have direct access from an improved public street in accordance with chapter 40, pertaining to subdivisions, and access to individual spaces shall be from private paved drives within the site. Where an internal private street provides access to individual lots or dwelling units, the same shall be paved in accordance with city standards, and it shall be dedicated to the public as an emergency access or fire lane easement to allow for the rapid and safe movement of vehicles used in providing emergency health or public safety services. The width, design, and construction shall be adequate to accommodate the traffic generated by the park and emergency and service vehicles, as determined by the city engineer, but in no case shall the width of a driving surface be less than 26 feet. Dead-end streets are not allowed. Cul-de-sac streets shall not exceed 400 feet in length. Fire lane easements shall be maintained by the manufactured/mobile home park. Gated/secured entrances shall be in accordance with the design standards for gated/secured entrances on private streets.

(2) *Street names and signs.* Within each manufactured/mobile home park, all streets shall be named, and manufactured/mobile homes numbered in a logical and orderly fashion. Street signs shall be of a color and size contrasting with those on public streets and roadways so that there is no confusion regarding which are private and which are public streets. These signs and numbers shall be of standard size and placement to facilitate location by emergency vehicles. Street names shall be submitted to the city manager or his designee and city engineer or his designee, along with the preliminary plat application, reviewed by the appropriate city staff with respect to street naming procedures set forth within chapter 40 and/or this Code, and approved by the planning and zoning commission on the preliminary plat for the subdivision. The street names shall be set with preliminary plat approval, and shall not be changed on the final plat without city approval.

(3) *Other signs.* Along all sections of emergency access easements, the owner or agent shall erect metal signs prohibiting parking. The sign type, size, height and location shall be in accordance with the Manual of Uniform Traffic Control Devices and approved by the city.

(4) *Intersections.* Internal streets shall interest adjoining public streets at approximately 90 degrees and at locations which will eliminate or minimize interference with traffic on those public streets.

(5) *Street lighting.* Street lighting within the manufactured/mobile home park shall be provided in accordance with chapter 40, pertaining to subdivisions, and shall be maintained by the owners of the manufactured/mobile home park.

(6) *Electric and telephone service.* All electrical distribution lines and all telephone lines shall be underground except the primary service lines to the park.

(7) *Drainage and soil protection.* The ground surface in all parts of the park shall be graded and equipped to drain all surface water in a safe, efficient manner. Each manufactured/mobile home space shall provide adequate drainage for the placement of a manufactured/mobile home. Exposed ground surfaces in all parts of every manufactured/mobile home park shall be paved and/or covered with stone, brick paving, or other similar solid material, or protected with a vegetative growth (such as grass) capable of preventing soil erosion and eliminating dust.

(8) *Firefighting.*

a. Approaches to all manufactured/mobile homes shall be kept clear for firefighting.

b. The owner or agent of a manufactured/mobile home park shall be responsible for the instruction of any staff in the use of the park fire protection equipment and in their specific duties in the event of a fire.

c. The owner shall supply standard city fire hydrants located within 500 feet of all manufactured/mobile home spaces, measured along the drive or street. Such hydrants shall utilize public water contained in public lines with in public easements.

d. The owner or agent of a manufactured/mobile home park shall be responsible for maintaining the entire area of the park free of dry brush, leaves and weeds in excess of six inches in height.

(9) *Anchorage of manufactured/mobile homes.* To insure against natural hazards such as tornados, high winds and electrical storms, anchorage for each manufactured/mobile home shall be provided in accordance with the building code and state law.

(10) *Skirting.*

a. All manufactured/mobile home units not attached to a permanent foundation shall provide skirting from the top of the unit's frame to grade. Skirting shall totally enclose and secure from view the unit's axles and all required anchors, footings, and piers.

b. All required skirting shall be of an opaque, noncombustible material, and shall be of a color similar to the materials used in the construction of the manufactured/mobile home unit such that it blends with the overall appearance of the unit.

(Ord. No. 2008-01, § 24, 2-4-2008)

Sec. 50-75. Office District (O).

(a) *General purpose and description.* The O Office District is established to create an appropriate setting for low intensity office and professional uses. The district can be used as a transition district between residential uses and more intense uses, and with appropriate buffers and landscaping, this district may be located in close proximity to residential districts. Permitted uses should be compatible with adjacent residential areas by limiting heights to one or two stories, and shall not include uses that create excessive amounts of traffic, noise, trash or late-night business operations. Traffic generated by uses in this district shall not be encouraged to travel through residential areas. Adaptive reuse of existing structures is encouraged. Buildings in this district should be compatible and similar in scale with residential uses and adjacent property.

(b) *Permitted uses.* Those uses listed for the O Office District in the use charts (section 50-82) as "P" or "C" are authorized uses permitted by right or conditionally permitted uses, respectively.

(c) *Height regulations.* Maximum height:

(1) Seventy feet; also see setback requirements related to height in subsection (d)(2)b of this section.

(2) One story for accessory buildings.

(d) *Area regulations.*

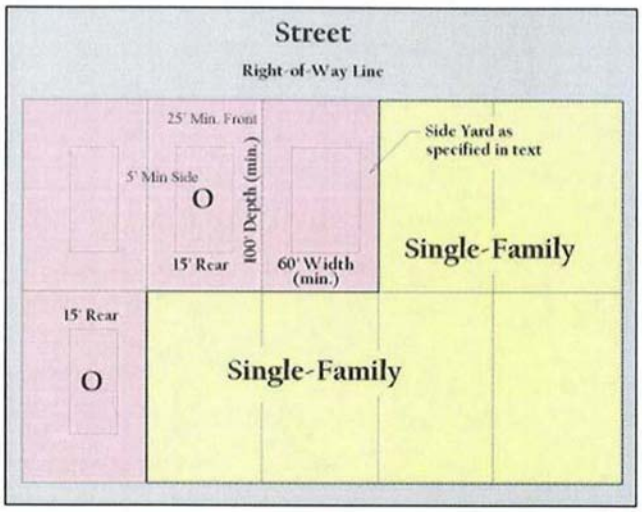
(1) *Size of lots.*

a. Minimum lot area: 6,000 square feet.

b. Minimum lot width: 60 feet.

c. Minimum lot depth: 100 feet.

Illustration 50-75-1: Lot and yard regulations for the Office District



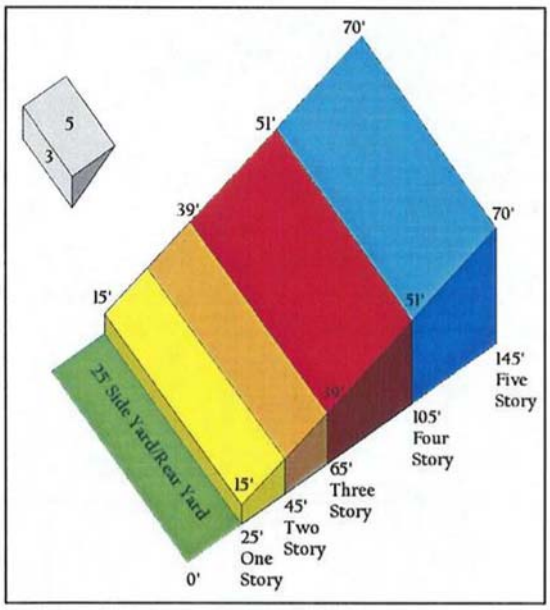
(2) *Size of yards and setbacks.*

a. Minimum front yard: 25 feet. Where a lot faces a designated arterial street, the front yard shall be a minimum of 35 feet.

b. Minimum side yard.

1. Interior: five feet.
2. Interior adjacent to property zoned for or restricted by a duly recorded subdivision plat for single-family residential purposes, which does not have an existing business on such single-family residential lot is 25 feet. If adjacent to a single-family, duplex, patio home or single-family attached district, then side and rear setbacks (within which parking is permitted) shall be according to the height of the primary structure, as follows:

Illustration 50-75-2: Setback and height relationship for structures



(i) Setbacks shall be measured at a ratio of five feet in horizontal setback distance for every three feet of building height as shown in Illustration 50-75-2.

(ii) Setback measurements shall be calculated by story.

(iii) These measurements shall not limit any building to less than 35 feet.

3. Side yard adjacent to a street: 15 feet.
4. Side yard adjacent to a designated arterial: 25 feet.

c. Minimum rear yard: 15 feet. If adjacent to a single-family, duplex (two-family), patio home or single-family attached district, then minimum rear yards (within which parking is permitted) shall be 60 feet, unless separated by an alley in which case the minimum shall be 20 feet. When adjacent to an arterial, such minimum rear yard shall be 25 feet.

d. Zero lot line exception: notwithstanding the requirements of this section, except where an interior side yard or rear yard is adjacent to property zoned for or restricted by a duly recorded subdivision plat to, or primarily used for, single-family residential purposes, there shall be no required interior side or rear yard if the wall adjoining such interior side or rear lot line, as applicable, is constructed with materials giving it a four-hour firewall rating. Yards adjacent to street or alley rights-of-way are excluded from this provision.

e. Minimum underground setback: any underground building structure shall be setback from any lot line by a minimum of 15 feet.

f. Minimum pavement setback: all paving, except for driveways and sidewalks, shall be setback from any public street right-of-way by a minimum of ten feet.

(3) *Maximum lot coverage.* Maximum lot coverage is 50 percent of the net site area (after right-of-way dedication) for the gross ground floor area of all building structures, including main and accessory buildings.

(4) *Maximum floor area.* Maximum floor area ratio (FAR) is 1:1.

(5) *Outdoor sales.* Outdoor sales are prohibited.

(Ord. No. 2008-01, § 25, 2-4-2008)

Sec. 50-76. General Retail District (GR).

(a) *General purpose and description.* The GR General Retail District is established to provide areas for local neighborhood shopping and service facilities for the retail sales of goods and services. These shopping areas should utilize established landscape and buffering requirements. The GR General Retail District should be located along or at the intersection of major collects or thoroughfares to accommodate higher traffic volumes.

(b) *Permitted uses.* Those uses listed for the GR district in the use charts (section 50-82) as "P" or "C" are authorized uses permitted by right or conditionally permitted uses, respectively.

(c) *Height regulations.* The maximum height in the GR district shall be:

a. Not to exceed 42 feet, for the main buildings.

b. One story for accessory buildings.

c. Additional height may be approved by CUP.

(d) *Area regulations.*

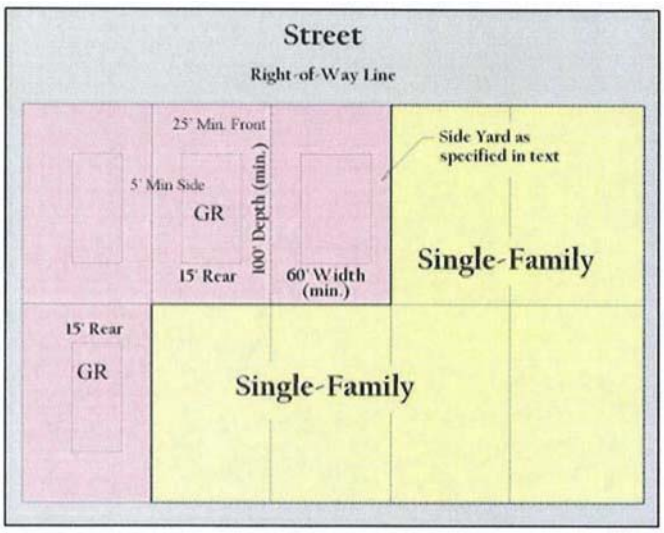
(1) *Size of lot.*

a. Minimum lot area: 6,000 square feet.

b. Minimum lot width: 60 feet.

c. Minimum lot depth: 100 feet.

Illustration 50-76-1: Lot and yard regulations for the GR District



(2) *Size of yards.*

a. Minimum front yard: 25 feet. Where a lot faces a designated arterial street, the front yard shall be a minimum of 35 feet.

b. Minimum side yard:

1. Interior: five feet.

2. Interior adjacent to property zoned for or restricted by a duly recorded subdivision plat for single-family residential purposes, which does not have an existing business on such single-family residential lot: 25 feet.

3. Side yard adjacent to a street: 15 feet.

4. Side yard adjacent to a designated arterial: 25 feet.

c. Minimum rear yard: 15 feet. If adjacent to a single-family, duplex (two-family), patio home or single-family attached district, then minimum rear yards (within which parking is permitted) shall be 60 feet, unless separated by an alley in which case the minimum shall be 20 feet. When adjacent to an arterial street, such minimum rear yard shall be 25 feet.

d. Zero lot line exception: notwithstanding the foregoing, except where an interior side yard or rear yard is adjacent to property zoned for or restricted by a duly recorded subdivision plat to, or primarily used for, single-family residential purposes, there shall be no required interior side or rear yard if the wall adjoining such interior side or rear lot line, as applicable, is constructed with materials giving it a four-hour firewall rating. Yards adjacent to street or alley rights-of-way are excluded from this provision.

e. Exceptions for certain retail shopping center outbuildings fronting State Highway 249: notwithstanding any other provision of this section to the contrary, the building line for retail outbuildings adjacent to State Highway 249 and State Highway 249 Bypass shall be ten feet if:

1. The retail outbuilding is within a shopping center development (a development comprised of retail businesses which share common parking and pedestrian areas and facilities for their clientele) which contains not less than 1¼ acres of land and which has not less than 240 feet of frontage on said State Highway 249 and State Highway 249 bypass;

2. The retail outbuilding contains not more than 100 square feet of floor area;

3. The retail outbuilding is located so as not to create a hazard to vehicular or pedestrian traffic on the shopping center site, the adjacent State Highway 249 and State Highway 249 Bypass, or any other adjacent public or private street or property; limit spacing of said structures to no greater than one per 300 feet;

4. The retail outbuilding is located not less than 50 feet from any paved portion of State Highway 249 and State Highway 249 Bypass, whether main lane or access road; and

5. The retail outbuilding is located so as to be a minimum of 300 feet from the closest retail outbuilding along either side of State Highway 249 and State Highway 249 Bypass, measured in a straight line from the center fronts of each retail outbuilding.

(3) *Maximum lot coverage.* Maximum lot coverage is 50 percent including main and accessory buildings; maximum 80 percent impervious coverage (including all buildings, parking areas, sidewalks, etc.).

(4) *Maximum floor area.* Maximum floor area ratio (FAR) is 1:1.

(5) *Outside storage.* Outside storage, which is differentiated from outdoor sales, shall be limited to a maximum of five percent of the total lot area. For screening requirements, see section 50-115

(Ord. No. 2008-01, § 27, 2-4-2008)

Sec. 50-77. Commercial District (C).

(a) *General purpose and description.* The C Commercial District is intended to provide a location for commercial and service-related establishments, such as wholesale product sales, welding/contractors shops, automotive repair services, upholstery shops, and other similar commercial uses. Some light manufacturing may also be allowed with certain conditions. The uses envisioned for the C Commercial District will typically utilize smaller sites and have operation characteristics which are generally not compatible with residential uses and some nonresidential uses. Convenient access to thoroughfares and collector streets is also a primary consideration.

(b) *Permitted uses.* Those uses listed for the C district in the use charts (section 50-82) as "P" or "C" are authorized uses permitted by right or conditionally permitted uses, respectively.

(c) *Height regulations.* The maximum height in the C district shall be:

(1) 70 feet for the main buildings; also see setback requirements related to height in subsection (d)(2)b of this section.

(2) One story for accessory buildings.

(3) Additional height may be approved by CUP.

(d) *Area regulations.*

(1) *Size of lot.*

a. Minimum lot area: 10,000 square feet.

b. Minimum lot width: 60 feet.

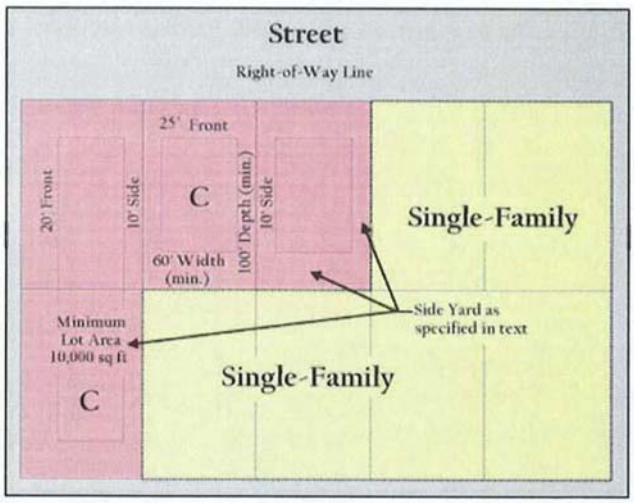
c. Minimum lot depth; 100 feet.

(2) *Size of yards.*

a. Minimum front yard: 25 feet. Where a lot faces a designated arterial street, the front yard shall be a minimum of 35 feet.

b. Minimum side and rear yard: ten feet. If adjacent to a single-family, duplex (two family), patio home or single-family attached district, then side and rear setbacks (within which parking is permitted) shall be according to the height of the primary structure, as follows:

Illustration 50-77-1: Setback and height relationship for commercial structures



1. Setbacks shall be measured at a ratio of five feet in horizontal setback distance for every three feet of building height as shown in Illustration 50-75-2.
2. Setback measurements shall be calculated by story.
3. These measurements shall not limit any building to less than 35 feet.

c. Interior side yards: when retail uses are platted adjacent to other retail uses and integrated into an overall shopping center site (i.e., lots/lease spaces abutting one another), no side yard is required provided it complies with the city's building code.

d. Exceptions for certain retail shopping center outbuildings fronting State Highway 249: notwithstanding any other provision of this section to the contrary, the building line for retail outbuildings adjacent to State Highway 249 and State Highway 249 Bypass shall be ten feet if:

1. The retail outbuilding is within a shopping center development (a development comprised of retail businesses which share common parking and pedestrian areas and facilities for their clientele) which contains not less than 1¼ acres of land and which has not less than 240 feet of frontage on said State Highway 249 and State Highway 249 Bypass;
2. The retail outbuilding contains not more than 100 square feet of floor area;
3. The retail outbuilding is located so as not to create a hazard to vehicular or pedestrian traffic on the shopping center site, the adjacent State Highway 249 and State Highway 249 Bypass, or any other adjacent public or private street or property; limit spacing of said structures to no greater than one per 300 feet;
4. The retail outbuilding is located not less than 50 feet from any paved portion of State Highway 249 and State Highway 249 Bypass, whether main lane or access road; and
5. The retail outbuilding is located so as to be a minimum of 300 feet from the closest retail outbuilding along either side of State Highway 249 and State Highway 249 Bypass, measured in a straight line from the center fronts of each retail outbuilding.

(3) *Maximum lot coverage.* Maximum lot coverage is 60 percent including main and accessory buildings; maximum 90 percent impervious coverage (including all buildings, parking areas, sidewalks, etc.).

(4) Maximum floor area. Maximum floor area ratio (FAR) is 2:1.

(5) The maximum glare produced by any industry shall be limited to four footcandles of illumination intensity beyond the industrial or commercial tract boundary throughout the light frequency spectrum beginning with ultraviolet and ending through the infrared wavelengths.

(Code 1978, § 5-9; Code 1993, § 14-9; Ord. No. 2008-01, § 31, 2-4-2008)

Sec. 50-78. Light Industrial District (LI).

(a) *General purpose and description.* The LI Light Industrial District is intended primarily for the conduct of light manufacturing, assembling and fabrication activities, and for warehousing, research and development, wholesaling and service operations that do not typically depend upon frequent customer or client visits. Such uses do require accessibility to major thoroughfares, major highways, and/or other means of transportation such as the railroad.

(b) *Permitted uses.* Those uses listed for the LI Light Industrial District in section 50-82 as "P" or "C" are authorized uses permitted by right or conditionally permitted uses, respectively.

(c) *Height regulations.* The maximum height in the LI district shall be:

(1) 70 feet for the main buildings; also see setback requirements related to height in subsection (d)(2)b of this section.

(2) One story for accessory buildings.

(d) *Area regulations.*

(1) *Size of lot.*

a. Minimum lot area: 5,000 square feet.

b. Minimum lot width: 50 feet.

c. Minimum lot depth: 100 feet.

(2) *Size of yards.*

a. Minimum front yard: 25 feet. Where a lot faces a designated arterial street, the front yard shall be a minimum of 35 feet.

b. Minimum side and rear yard: 25 feet. If adjacent to a single-family, duplex (two family), patio home or single-family attached district, then side and rear setbacks (within which parking is permitted) shall be according to the height of the primary structure, as follows:

1. Setbacks shall be measured at a ratio of five feet in horizontal setback distance for every three feet of building height as shown in Illustration 50-75-2.

2. Setback measurements shall be calculated by story.

3. These measurements shall not limit any building to less than 35 feet.

(3) *Maximum lot coverage.* Maximum lot coverage is 60 percent including main and accessory buildings; maximum 90 percent impervious coverage (including all buildings, parking areas, sidewalks, etc.)

(4) *Maximum floor area.* Maximum floor-area-ratio (FAR) is 2:1.

(5) The maximum glare produced by any industry shall be limited to four footcandles of illumination intensity beyond the industrial or commercial tract boundary throughout the light frequency spectrum beginning with ultraviolet and ending through the infrared wavelengths.

(Code 1978, § 5-9; Code 1993, § 14-9; Ord. No. 2008-01, § 31, 2-4-2008)

Sec. 50-79. Old Town and Mixed-Use District (OT and MU).

(a) *Purpose and intent.*

(1) Old Town is an area in which many diverse land uses currently exist. The nature of the area, therefore, is a mixture of retail, commercial and other nonresidential uses, along with single-family homes and multiple-family uses. The city's comprehensive plan (the future land use plan) endorses the continuation of the mixture of uses in this area of the city, and specifically states that Retail, Office, Single-Family, Duplex (Two-Family) and Multifamily are the most appropriate uses in these areas. In addition, to serve existing residential areas and their successful integration with future nonresidential uses, increased pedestrian access would be beneficial. The Old Town and Mixed Use District is intended to provide a zoning mechanism for a variety of uses in the original town site and those areas that have a diverse mixture of uses.

(2) The development standards in the Old Town area are designed to maintain and encourage development and redevelopment within the central business section (old downtown) of the city. Standards for the district are generally intended to regulate development such that new structures look similar to existing ones within this section of the city. They are also intended to preserve and enhance the image, character and unique qualities of the city's historic original business district. Pedestrian activity and access is also of extreme importance within this district. Pedestrian spaces shall be treated with amenities that are selected based upon their ability to unify the streetscape with the area's historic past. It is important that elements such as construction materials, colors, textures and fixture design complement the area's historic

qualities. These features shall be repeated throughout the streetscape so as to unify the district as a whole. The following pedestrian-oriented areas are permitted:

a. Public art spaces;

b. Monuments (e.g., statues, benches, fountains);

c. Playgrounds;

d. Transit waiting areas;

e. Museums;

f. Plazas;

g. Performing art buildings; and

h. Outdoor eating areas.

(3) The Old Town and Mixed Use District is also intended for those areas outside the Old Town area that either currently have or are suitable for a mixture of retail, commercial and other nonresidential uses, along with single-family homes and multifamily uses and are designated for such mixed use on the adopted comprehensive plan. Proposed planned mixed use development may also and is encouraged to utilize a Planned Development District with its flexibility.

(4) For the purposes of this district and its regulations, the term Old Town Area shall be defined to include all lots shown on the revised map filed of record with the county on July 8, 1912, a true and correct copy of which is on file in the office of the city secretary, and which is identified as the Old Town Tomball Map.

(b) *Permitted uses.* Those uses listed for the OT and MU district in the use charts (section 50-82) as "P" or "C" are authorized uses permitted by right or conditionally permitted uses, respectively.

(c) *Height regulations.* The maximum height in the OT and MU district shall be:

(1) Two stories for the main building. A three or four story building may be allowed with a conditional use permit.

(2) One story for accessory buildings.

(d) *Area regulations for residential uses.*

(1) *Size of lots.*

a. Minimum lot area: 5,000 square feet. Duplex (two-family) lots shall be a minimum of 7,000 square feet.

b. Minimum lot width: 50 feet; radial lots shall have a minimum width of 50 feet at and for a distance of 30 feet behind the building line. The minimum width of lots for duplexes shall be 70 feet.

c. Minimum lot depth: 100 feet.

d. Two or more lots of record in existence on the adoption date of the ordinance from which this chapter is derived that do not meet these area requirements and are under the same ownership may be combined into one parcel meeting the requirements of this district. Such parcel shall be considered one lot and all required yards shall be measured from the new lot lines not owned in common. No lot shall be created that has a front yard with less than 50 feet of frontage on the front street.

(2) *Size of yards.*

a. Minimum area requirements for a single-family residence shall be the same as the SF-6 district.

b. Minimum area requirements for a Duplex (Two-Family) or Duplex Townhome shall be the same as the Duplex District.

c. Minimum area requirements for a multifamily complex shall be the same as the MF district unless otherwise specified herein.

d. Minimum front yard: 20 feet. Where lots have double frontage, running through from one street to another, the required front yard shall be provided on both streets.

e. Minimum side yard: five feet; ten feet for a corner lot.

f. Minimum rear yard is ten feet; the minimum rear yard where lots back on a designated arterial street shall not be less than 25 feet. However, lots backing up to a 20 foot alley shall have a 5 foot minimum rear yard and abutting a 15 foot alley shall have a 7.5 foot minimum rear yard.

g. Encroachment by building eaves and air conditioning units: building eaves and air conditioning compressors may encroach not more than three feet beyond building lines into the required rear and side yard on lots created by subdivision plats for single-family residential use duly approved by the city and recorded with the county clerk of either county, as applicable, on or before November 1, 1999.

(3) *Minimum floor area.* Minimum floor area per dwelling unit is 650 square feet of heated and/or air conditioned floor area.

(4) *Nonconforming lots.* Where a lawfully existing lot having less area, depth, or width than required existed in separate ownership on the effective date of Ordinance No. 2004-09, the regulations required by this section relating to the size of such lot shall not prohibit the erection of a single-family dwelling thereon.

(e) *Area regulations for nonresidential uses.*

(1) *Size of lot.*

a. Minimum lot area: 5,000 square feet.

b. Minimum lot width: 50 feet.

c. Minimum lot depth: 100 feet.

(2) *Size of yards.*

a. Minimum area requirements for an office, retail or commercial use shall be the same as required in the Commercial District unless otherwise specified in this section.

b. Minimum front yard is 20 feet. Commercial properties located on Main Street, Market Street, and Commerce Street may have a zero front building line.

c. Minimum side and rear yard is ten feet or ten percent of the lot width if less than 100 feet of lot width when adjacent to a nonresidential zoning district or use. If adjacent to a Single-Family, Duplex (Two-Family), Patio Home or Single-Family Attached District or use, then side and/or rear setback shall be a minimum of 20 feet. Corner lots shall maintain a ten side yard setback.

d. Interior side yards: when retail uses are platted adjacent to other retail uses and integrated into an overall shopping center site (i.e., lots/lease spaces abutting one another), no side yard is required provided it complies with the city's building code.

e. Old Town area required yard and building line exceptions. A commercial building constructed in the Old Town area before August 16, 1999, and which does not comply with the building lines set forth above, may expand in size provided it maintains a minimum ten-foot front building line and a minimum ten-foot side building line, provided the owner demonstrates and the chief building official determines that the use as conducted and

managed, or as proposed, has minimal incompatibilities with the neighborhood. Factors used to evaluate this include:

1. That management practices eliminate problems such as noise, waste materials, competition for on-street parking, or similar conflicts.
2. The use's history of code enforcement complaints against it.
3. That the use has been maintained in good condition or that the nonconformity represents a disincentive for such maintenance.
4. Appeal of the chief building official's determination shall be to the planning and zoning commission with the same notice requirements to adjacent property owners as to the board of adjustments.

f. Vacant land, or lots or tracts formerly used as residential property, may be developed for commercial use without conforming to the building line requirements of this chapter if the property owner or his agent establishes the following:

1. Three or more properties within a three-block distance, whether on the same side of the street or across the street, have the same nonconformity; and
2. Proposed development plans for the property are no more nonconforming than existing properties on the same street and maintain the same character as existing buildings.

(f) *Special requirements.*

(1) *Building facade plan.* The architectural style and scale of new/renovated buildings within the Old Town area on lots fronting on Commerce, Main, Market Streets between Elm and Pine Streets shall be compatible with the styles and scale of other adjacent buildings, and shall be historically accurate to the greatest extent possible in order to preserve the unique character of the city's downtown area. Therefore:

a. In addition to the building permit plan which is required by sections 50-35 and 50-36, a building facade plan shall also be required within the above-mentioned Old Town area for new buildings and additions of more than 50 percent of the original structure's size. The building facade plan shall be submitted in conjunction with the building permit plan application.

b. The building facade plan shall clearly show how any new structure and/or any structure that is undergoing major exterior renovations will look. Especially significant is the way in which such structures will be viewed from the thoroughfare or alley upon which the property faces and/or sides, and shall portray a reasonably accurate depiction of the materials to be used.

c. Review, approval and appeal procedures shall be the same as the procedures for a building permit plan, as outlined in section 50-36

d. The city manager or his designee may, as he deems appropriate, require submission of information and materials (possibly actual samples of materials to be used) additional to those initially submitted by the applicant during the building facade plan review process.

(2) *Residential uses.*

a. *Single-family uses.* Single-family uses shall be permitted and shall be compatible with existing surrounding single-family homes.

b. *Multifamily residential and nonresidential uses.* Multifamily residential uses shall be permitted within the Old Town and Mixed Use District in conjunction with nonresidential uses, wherein at least one floor of the building is dedicated to nonresidential use. Such structure shall meet the area requirements of the nonresidential use, provided parking is provided for all uses.

c. *Multifamily residential uses.* Multifamily residential uses shall be permitted within the Old Town and Mixed Use District in accordance with the following standards:

1. All dwelling units shall have ground-floor exterior access, which does not include access into a garage or access from a garage into a dwelling unit;

2. All dwelling units shall have a front porch space of at least eight square feet located in front of the front door;

3. All dwelling units shall have a pitched or gabled roof. Flat roofs shall be permitted to allow for the incorporation of terraces;

4. Each dwelling unit shall have varying architectural elevations including varying rooflines, windows, stoop styles, etc.; and

5. Exemptions to these standards may be made during the city's review process if the multifamily use is developed/constructed above (i.e., is located within a second or third story) a nonresidential use.

(3) *Nonresidential design standards for the Old Town area.*

a. *Facades.*

1. *Existing nonresidential buildings.* False fronts or parapets may be added to existing buildings in order to add character and detail to simple facades.

2. *Newly constructed nonresidential buildings.* Any new facade shall avoid long, monotonous, uninterrupted exterior walls wherever such facades are publicly visible. No more than 20 feet of horizontal distance of exterior wall shall be provided without facade articulation/architectural relief for any facade facing a street right-of-way or pedestrian-oriented area (refer to subsection (f)(3)e of this section). Facade articulation/architectural relief can include pilasters, windows, entrances, arcades, awnings/canopies, or other types of building massing that modulates the building mass or surface texture.

b. *Exterior finishes.* Predominant exterior finish shall be fired brick or other masonry materials. Materials other than fired brick shall be considered during the plan review process, and determination of approval shall be based upon whether such materials are:

1. Similar in appearance and quality to fired brick;

2. Similar in appearance to original materials used within the Old Town area; and/or

3. Cementious fiberboard such as Hardi-plank may be approved where the appearance is similar in appearance to the original materials used within the Old Town area. The use of glass material shall be permitted for less than 70 percent of the exterior facade of a structure. Trim (i.e., lintels, sills, door jambs, cornices and other similar items) shall be brick, cast stone, stone, cast or wrought iron, or concrete, and colors shall be complementary to the predominant facade colors. Accent colors for friezes, doors and door frames, window frames and mullions, awnings, moldings and other similar features shall be colors that are complementary to, and compatible with, the spirit and intent of the downtown streetscape. Bright or fluorescent colors shall not be permitted on any part of any structure.

c. *Windows, doors and other openings.* Reflective glass shall not be used for windows of any structure's first floor; detailing for windows, doors and other openings shall be of wood, glass or a metal material that is complementary to the period or building style.

d. *Awnings/canopies.*

1. *Ratio.* Awnings shall be appropriate to the scale of the building's size and configuration. They shall not extend above the roofline of any single-story structure, or above the top of the second floor of any multiple-story structure at the awnings' highest points. Awnings shall not completely obstruct any windows on the building.

2. *Projection.* Since awnings must extend beyond the building face, a reasonable amount of projection shall be allowed. No awning shall extend more than five feet outward from the building face/surface. Awnings made in such a manner as to be easily removed may encroach into the right-of-way, provided such awnings are at least eight feet above the sidewalk or surface, do not have any structural supports other than those directly attached to the building and are maintained and not allowed to deteriorate or become tattered, rusty, unpainted or unsightly. Awnings encroaching along Main Street may also have to get approval from the state department of transportation.

3. *Colors.* A mixture of colors is recommended, but no more than three different colors shall be used for awnings on a single building facade (excluding business logo, which may have more colors). Bright or fluorescent colors shall not be permitted.

4. *Materials.* Materials shall be of cloth, canvas, or metal, or another material that is complementary to the period or building style and that is fire retardant. Plastic shall not be permitted.

5. *Movement.* Except for slight movements that are normal for fabric canopies (i.e., along fringe, etc.), no movement shall be allowed for awnings and canopy structures.

e. *Streetscape elements.* Streetscape elements are considered to include the following: planters, window boxes, street furniture/furnishings, trash receptacles, and light features (e.g., fixtures attached to the structure). Such elements are permitted and shall be:

1. Maintained to a high quality (i.e., no peeling paint, broken parts, etc.);

2. Complementary to the historical time frame of the Old Town area;

3. Similar to those previously approved by the city;

4. Complementary in color to the main building color (bright or fluorescent colors shall not be permitted); and

5. Located a maximum of five feet from the building front/facade.

(4) *Nonresidential dumpsters and mechanical equipment.*

a. Dumpsters and any other waste storage areas (refuse areas) shall be screened in accordance with section 50-115

b. Mechanical equipment, air conditioning units, transformers, and the like shall be screened with a six-foot screen of shrubs or a masonry wall sufficient to properly shield such areas/containers from public view; required screening shall be at least 70 percent opaque throughout the year, regardless of location. Roof-mounted equipment shall also be screened with devices (e.g., parapet wall) matching the building materials used in the structure upon which the equipment is located.

(5) *Additional off-street parking space requirements.* The following additional requirements shall modify the parking requirements in section 50-82 and section 50-112 as they apply to the Old Town area. In addition, where there is a conflict, the requirements of this section shall supersede those in section 50-112

a. *Off-street parking.* For that portion of the Old Town area bounded by Fannin Street, Houston Street, the railroad tracks, and Pine Street, and including the lots that front on Fannin Street and Houston Street adjacent to such portion, there shall not be a minimum off-street parking requirement for mixed use and nonresidential developments. Residential developments shall provide off-street parking stalls in accordance with section 50-82

b. *Off-site parking.* Use of off-site parking shall be permitted to satisfy the off-street parking requirements of this chapter if said off-site parking is within the Old Town area or blocks adjacent thereto. Provided further, no off-site parking space shall be designated for use by more than one business for the purposes of satisfying such requirements.

c. *On-street parking.* In the area bounded by Main Street, Market Street, and Commerce Street, between Pine and Elm, one parking space credit shall be allowed for every 22 feet of development frontage less five feet reserve on either side of driveways and ten-feet reserve on street intersections.

d. *Off-street parking design standards.* Required off-street parking areas within the Old Town area shall have individual spaces marked by painted lines or curbs or other means to indicate individual spaces. Parking schemes which require the use of adjacent public or private streets for maneuvering incidental to such parking shall be allowed, except on Main Street. This requirement shall apply to all parking required for new construction and/or additions to existing buildings.

e. *Parking garages.* Parking garages shall meet all requirements of the OT and MU District, including facade, streetscape, and building material requirements. Parking garages must be located to the side or rear of the main building.

(6) *Residential adjacency considerations.*

a. *Site design and nuisance concerns.* The building owner must include in his proposal measures for buffering, landscaping, or other site design, and any limitations necessary to address nuisance concerns, such as noise, to protect adjacent property owners.

b. *Screening.* Screening of nonresidential uses and refuse areas shall be in accordance with section 50-115

c. *Outside storage.* Outside storage, which is differentiated from outdoor sales, shall be limited to a maximum of five percent of the total lot area. For screening requirements see section 50-115

(Ord. No. 2008-01, § 34, 2-4-2008; Ord. No. 2011-06, § 2, 5-2-2011; Ord. No. 2013-15, § 2, 9-3-2013)

Sec. 50-80. Planned Development District (PD).

(a) *General purpose and description.*

(1) The PD Planned Development District is a district which accommodates planned associations of uses developed as integral land use units such as office parks, retail/commercial or service centers, shopping centers, residential developments having a mixture of housing options (e.g., Single-Family, Multifamily, Duplex (Two Family), etc.), or any appropriate combination of uses which may be planned, developed or operated as integral land use units either by a single owner or a combination of owners. A PD Planned Development District may be used to permit new or innovative concepts in land utilization not permitted by other zoning districts in this chapter, to ensure the compatibility of land uses, and to allow for the adjustment of changing demands to meet the current needs of the community by meeting one or more of the following purposes:

a. To provide for a superior design on lots or buildings;

b. To provide for increased recreation and open space opportunities for public use and enjoyment;

c. To provide amenities or features that would be of special benefit to the property users or to the overall community;

d. To protect or preserve natural amenities and environmental assets such as trees, creeks, ponds, floodplains, slopes, viewscapes, or wildlife habitats;

e. To protect or preserve existing historical buildings, structures, features or places;

f. To provide an appropriate balance between the intensity of development and the ability to provide adequate supporting public facilities and services; and

g. To meet or exceed the standards of this chapter.

(2) The city council, after public hearing and proper notice to all parties affected and after recommendation from the planning and zoning commission, may authorize the creation of a PD Planned Development District, in accordance with the provisions of this section and section 50-34

(3) The ordinance granting a PD Planned Development District shall include a statement as to the purpose and intent of the PD Planned Development District granted therein, as well as a general statement citing the reason for the PD Planned Development District request.

(b) *Permitted uses.*

(1) A PD Planned Development District may be approved with any use or combination of uses allowed by this chapter. The uses permitted in any specific PD Planned Development District shall be enumerated in the ordinance establishing such district, along with any conditions or limitations deemed appropriate for the specified uses.

(2) Patio homes, zero lot line homes, single-family attached and townhome single-family residential dwelling units as part of a master planned development with amenities including open space.

(c) *Area and height regulations.*

(1) The minimum acreage for a PD Planned Development District request shall be four acres.

(2) Each PD Planned Development District shall establish regulations deemed necessary and appropriate for the development of the property within the district and the protection of neighboring properties. These regulations may include, but are not limited to, the following:

a. Front, side, and rear yard requirements;

b. Minimum lot width, depth, and areas requirements;

c. Maximum lot coverage;

d. Maximum building size and/or height;

e. Landscaping, open space, and screening requirements;

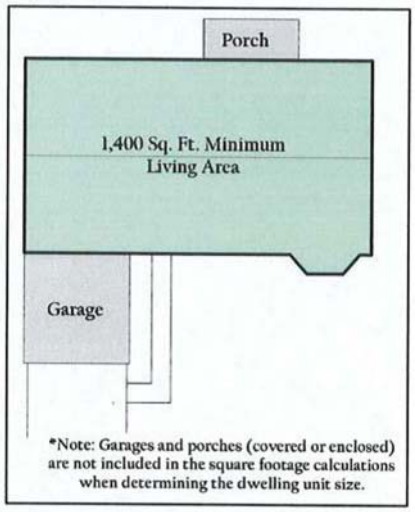
f. Off-street parking and loading requirements; and

g. Signage requirements.

(d) *Area and height regulations for patio homes and zero lot line developments.*

(1) *Minimum acreage.* The minimum acreage for a planned development request for a patio homes/zero lot line single-family residential dwelling unit complex shall be four acres.

Illustration 50-80-1: Floor area for the PD-PH District]



(2) *Minimum regulations.* Each PD Planned Development District shall establish regulations deemed necessary and appropriate for the development of the property within the district and the protection of neighboring properties. The following regulations are minimums, but are not limited to, and may be increased or otherwise modified for a particular development:

a. Maximum density is ten dwelling units per acre with each having a minimum of 1,400 square feet of living area.

b. Minimum lot requirements.

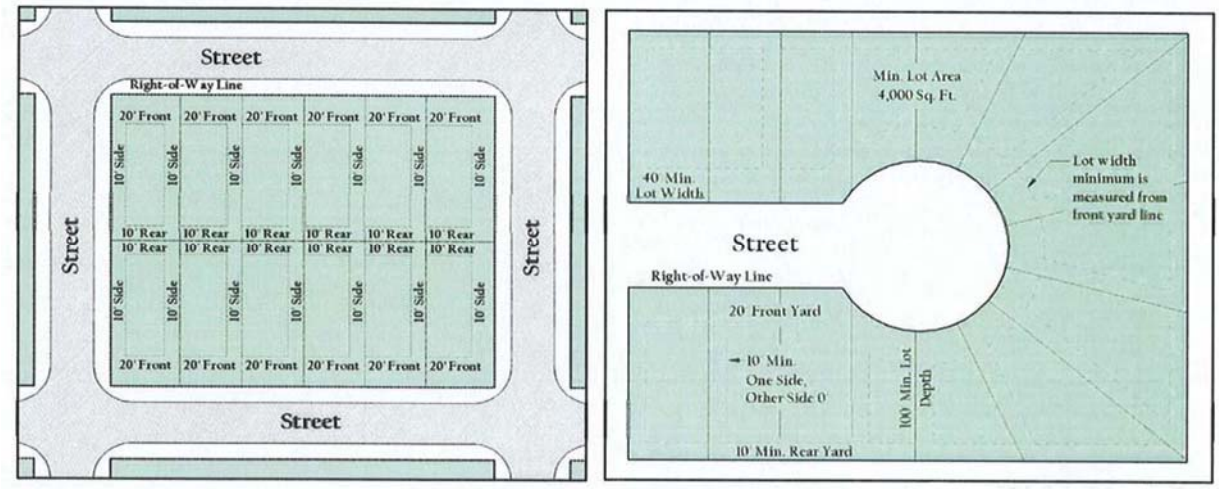
1. Lot size: 4,000 square feet.

2. Width: 40 feet.

3. Depth: 100 feet.

c. Minimum required yards and building lines:

Illustration 50-80-2: Lot and yard regulations for the PD-Zero Lot Line District



1. Front is 20 feet, except that where a lot faces on an arterial street, the front building line shall not be less than 35 feet.

2. Side—Interior lots. The side building line, to include eaves and appurtenances, shall not be less than five feet. On zero lot line homes the side yards shall be a minimum of zero feet and ten feet respectively. (See Illustration 50-80-2.)

3. Side—Corner lots are 15 feet, except that where a lot sides on an arterial street, the building line shall not be less than 25 feet.

4. Rear—Generally are 15 feet, except where the rear property line abuts an alleyway, there shall be a minimum of 30 feet between the buildings abutting said alleyway, provided that if the alleyway is a 20-foot alleyway, then the minimum rear building line shall be not less than five feet, and if the alleyway is a 15-foot-wide alleyway, then the minimum rear building line shall be not less than 7.5 feet. Zero lot line developments shall be a minimum of ten feet. (See Illustration 50-80-1.)

5. Rear—Arterial street. The rear building line where a lot backs on an arterial street shall not be less than 25 feet

(3) *Maximum lot coverage.* Not more than 60 percent of a lot may be covered with buildings, driveways, sidewalks, or other impermeable material, unless approved otherwise at the time of the PD Planned Development District and/or site plan approval by the planning and zoning commission and the city council.

(4) *Maximum height.* Maximum height is two stories, or 25 feet in total height, including gables.

(5) *Green space/recreational areas.* A minimum of 30 percent of the gross platted area shall be open green space. The term "open green space" is defined as, and limited to common areas of open space or landscaping and community recreational areas that are irrigated and continuously maintained. The term "open green space" does not include areas specifically designated or used as building sites for patio home or zero lot line units, building sites for utility or storage buildings, parking lots, garages, streets, or driveways within a patio home development. The actual surface areas of open green space, such as common area lawns and landscaping, community swimming pools and surrounding paved deck area, community tennis courts, community rooms, community saunas, and other common recreational areas, shall be considered in calculating the minimum requirement for open green space. Required buffer yards, except surfaced parking and driveways located within said buffer yards, if any, may be included in computing the minimum required area of open green space.

(6) *Screening requirements.* A fence, wall, or other similar screening device, of not less than six feet nor more than eight feet in height, shall be constructed and maintained along the two sides and the rear of each patio home development complex; provided, however, no such screening device shall be required adjacent to portions of the development which contain green space, lakes, or natural habitat for a distance of 50 feet or more from such perimeter boundary.

(7) *Sidewalks.* Sidewalks of concrete cement or other masonry construction shall be provided along all streets within a patio home development in accordance with applicable city standards and specifications.

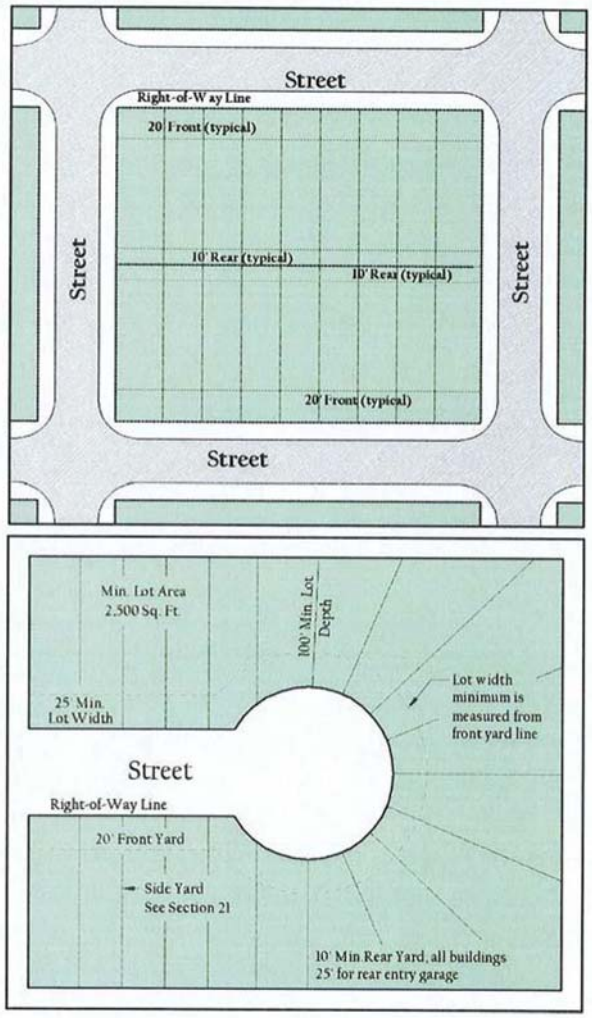
(8) *Visitor parking.* In addition to the parking required in section 50-112, the on and off street parking shall be analyzed to ensure that a minimum of one additional space per every two dwelling units is available for visitor parking.

(e) *Area and height regulations for townhomes and single-family attached residential dwelling units.*

(1) *Minimum acreage.* The minimum acreage for a planned development request for a townhome or single-family attached single-family residential dwelling unit complex shall be four acres.

(2) *Regulations.* Each PD Planned Development District shall establish regulations deemed necessary and appropriate for the development of the property within the district and the protection of neighboring properties. The following regulations are minimums but are not limited to, and may be increased or otherwise modified for a particular development:

Illustration 50-80-3: Lot and yard regulations for the PD-Townhome/Attached



a. Maximum density is 12 dwelling units per acre.

b. Minimum lot requirements:

   1. Lot size: 3,600 square feet.

   2. Width: 25 feet.

   3. Depth: 100 feet.

c. Minimum required yards and building lines.

   1. Front is 20 feet, except that where a lot faces on an arterial street, the front building line shall not be less than 35 feet.

   2. Side—Interior lots. There shall be no side yard or building line for a side of an interior lot which is adjacent to another townhome. The two side yard or building lines when two units do not share a common lot line, including eaves and appurtenances, shall be any combination that provides at least ten feet between structures.

d. Side—Corner lots are 15 feet, except that where a lot sides on an arterial street, the building line shall not be less than 25 feet.

e. Rear—Generally are ten feet, except where the rear property line abuts an alleyway, there shall be a minimum of 30 feet between the buildings abutting said alleyway, provided that if the alleyway is a 20-foot alleyway, then the minimum rear building line shall be not less than five feet, and if the alleyway is a 15-foot-wide alleyway, then the minimum rear building line shall be not less than 7.5 feet.

f. Rear—Arterial streets. The rear building line where a lot back on an arterial street shall not be less than 25 feet.

(3) *Maximum lot coverage.* Not more than 60 percent of a lot may be covered with buildings, driveways, sidewalks, or other impermeable material.

(4) *Maximum height.* Two stories, or 25 feet in total height, including gables, shall be the maximum height.

(5) *Green space/recreational areas.* A minimum of 30 percent of the gross platted area shall be open green space. The term "open green space" is defined as, and limited to common areas of open space or landscaping and community recreational areas that is irrigated and continuously maintained. The term "open green space" does not include areas specifically designated or used as building sites for patio home or zero lot line units, building sites for utility or storage buildings, parking lots, garages, streets, or driveways within a patio home development. The actual surface areas of open green space, such as common area lawns and landscaping, community swimming pools and surrounding paved deck area, community tennis courts, community rooms, community saunas, and other common recreational areas, shall be considered in calculating the minimum requirement for open green space. Required buffer yards, except surfaced parking and driveways located within said buffer yards, if any, may be included in computing the minimum required area of green space.

(6) *Screening requirements.* A fence, wall, or other similar screening device, of not less than six feet nor more than eight feet in height, shall be constructed and maintained along the two sides and the rear of each patio home development complex; provided, however, no such screening device shall be required adjacent to portions of the development which contain green space, lakes, or natural habitat for a distance of 50 feet or more from such perimeter boundary.

(7) *Sidewalks.* Sidewalks of concrete cement or other masonry construction shall be provided along all streets within a townhome development in accordance with applicable city standards and specifications.

(8) *Visitor parking.* In addition to the parking required in section 50-112, the on and off street parking shall be analyzed to ensure that a minimum of one additional space per every two dwelling units is available for visitor parking.

(f) *Approval process.*

(1) *Maximum of four steps.* The review process for a planned development shall include up to four steps:

a. Preapplication conference with the city manager or his designee (refer to section 50-36);

b. Adoption of ordinance establishing planned development district;

c. Concept plan; and

d. Construction of project (after city approval of all required plans and plats).

(2) *Payment of all indebtedness attributable to the subject property.* Refer to section 50-36

(3) *Official submission date and completeness of application.* Refer to section 50-34

(4) *Supplemental requirements.* Refer to section 50-36

(g) *Concept plan.*

(1) *Purpose.* This section establishes a review process for planned developments. The purpose is to ensure that a development project is in compliance with all applicable city ordinances and guidelines prior to commencement of construction.

(2) *Applicability.* Submission and approval of a concept plan shall be required for all planned developments.

(3) *Building permit and certificate of occupancy.* A concept plan shall be submitted in conjunction with a building permit application (this is a different application than the building permit plan that is discussed within this section). No building permit shall be issued until a concept plan and all other required engineering/construction plans are first approved by the city. No certificate of occupancy shall be issued until all construction and development conforms to the concept plan and engineering/construction plans, as approved by the city.

(4) *Extent of area that should be included in a concept plan.* When the overall development project is to be developed in phases, the area included within the concept plan shall include only the portion of the overall property that is to be developed/constructed.

(5) *Procedures and submission requirements for concept plan approval.* All concept plans shall be prepared by a qualified civil engineer, land planner, architect or surveyor, and it shall clearly show in detail how the site will be constructed (such as paving, buildings, landscaped areas, utilities, etc.). To ensure the submission of adequate information, the city is hereby empowered to maintain and distribute a separate list of specific requirements for the review of concept plan applications.

(6) *Review and approval of a concept plan.* The approval process for a concept plan shall generally be reviewed by city staff, recommendation by the planning and zoning commission, and approval by the city council.

a. *City staff review of concept plans.*

1. Upon official submission of a complete application of a concept plan for approval, the city shall review the application. Specifically, the city manager or his designee, city engineer, and the building official or their designee shall review the concept plan prior to the concept plan being forwarded to the planning and zoning commission. Determination of application completeness, notice to the applicant in writing of missing documents and information within ten business days and expiration of application within 45 calendar days due to incompleteness shall be in accordance with section 50-34

2. Concept plans shall be evaluated to ensure that all developments are, to the best extent possible, constructed according to the city's codes and ordinances.

3. Following city staff review, and following discussions regarding necessary revisions, the applicant shall resubmit additional copies of the corrected concept plan to the city manager or his designee.

4. The city manager or his designee shall then submit the corrected plan to the planning and zoning commission.

5. It should be noted that the city manager or his designee shall forward the original plan application to the commission if the corrected version is not resubmitted within the prescribed time period.

6. It should also be noted that a corrected plan that is incomplete or is otherwise not ready for consideration shall be subject to denial.

b. *Planning and zoning commission review of concept plans.*

1. All concept plan applications shall be reviewed by the planning and zoning commission.

2. The city manager, or his designee, shall schedule consideration of the concept plan application on the regular agenda of the planning and zoning commission within 30 calendar days after the application is received.

3. The planning and zoning commission shall review the concept plan and shall recommend to the city council approval, approval subject to certain conditions, or denial of the concept plan.

c. *City council review of and action on concept plans.*

1. All concept plan applications shall be reviewed by the city council after being reviewed by the planning and zoning commission.

2. The city manager, or his designee, shall schedule consideration of the concept plan application on the regular agenda of the city council.

3. The city council shall review the concept plan and shall approve, approve subject to certain conditions, or deny approval of the concept plan.

(7) *Revisions to the approved concept plan.*

a. *Minor revisions/amendments.*

1. It is recognized that final architectural and engineering design may necessitate minor changes in the approved concept plan. In such cases, the city manager, or his designee, shall have the authority to approve minor modifications to an approved concept plan. Such minor modifications submitted on an amended concept plan, which shall substantially conform to the previously approved concept plan.

2. Submission materials and requirements for approval of an amended concept plan shall be as determined by the city manager or his designee.

b. *Major revisions.* In the event of revisions that are more extensive in nature (i.e., do not conform to the description for minor amendments in subsection (g)(7)a of this section), a revised concept plan must be resubmitted, reviewed, and approved by the city manager or his designee. The city manager or his designee shall have the authority to determine whether a revised concept plan warrants a review and approval as outlined in subsection a. of this section.

(8) *Effect of review/approval.* The concept plan shall be considered authorization to proceed with construction of the site provided all other required city approvals are obtained (such as final plat, engineering plans, etc.).

(9) *Validity, lapse, and reinstatement of concept plan.* Refer to section 50-37

(h) *List of planned development districts.* All Planned Development zoning districts approved in accordance with the provisions of this chapter, as may be amended, shall be prefixed by a "PD" designation and assigned a unique identification number (e.g., PD-1, PD-2, PD-3, etc.), and shall also be referenced on the zoning district map. A list of such Planned Development Districts, showing the uses permitted and any other special stipulations of each PD Planned Development District shall be maintained as part of this chapter.

(i) *Prior planned development ordinances remaining in effect.* Prior to adoption of the ordinance from which this chapter is derived, the city council previously established by platting certain townhome, patio home and zero lot line developments, some of which are to be continued in full force and effect. The ordinances, parts of ordinances and/or plats approved prior to adoption of the ordinance form which this chapter is derived that applied to these developments, specified in appendix A-1 on file in the office of the city secretary, shall be carried forth in full force and effect and shall become the conditions, restrictions, regulations and requirements which apply to the respective PD Planned Development Districts shown on the zoning district map as of the effective date of the ordinance from which this chapter is derived for the property the requirements apply to. Each townhome, patio home and zero lot line development in existence at the time of adoption of the ordinance from which this chapter is derived is hereby assigned a unique identification number (e.g., PD-1, PD-2, PD-3, and so

on) as shown in appendix A-1, and subsequent PD ordinances adopted after the effective date of the ordinance from which this chapter is derived shall be similarly numbered for identification purposes.

(Ord. No. 2008-01, § 36, 2-4-2008)

Sec. 50-81. Conditional Use Permit (CUP).

(a) *Purpose and intent.*

(1) *Nature of conditional use.* A conditional use is a land use which, because of its unique nature, is compatible with the permitted land uses in a given zoning district only upon a determination that the external effects of the use in relation to the existing and planned uses of adjoining property and the neighborhood can be mitigated through imposition of certain standards and conditions. This section sets forth the standards used to evaluate proposed conditional uses and the procedures for approving conditional use permit (CUP) applications.

(2) *Permit required.* No conditional use shall be established and no building permit shall be issued for any use designated as a conditional use within any zoning district until a conditional use permit (CUP) is approved and issued in accordance with the provisions of this section and section 50-34. An application for a CUP shall be accompanied by a concept plan prepared in the manner described in subsection (e) of this section.

(b) *Status of conditionally permitted uses.* The following general rules apply to all conditional uses:

(1) The designation of a use in a zoning district as may be permitted by CUP in section 50-82 (shown as "C" in the use charts of said chapter does not constitute an authorization or assurance that such use will be approved.)

(2) Approval of a CUP shall authorize only the particular use for which the CUP is issued.

(3) No use authorized by a CUP shall be enlarged, extended or relocated, nor may the number of dwelling units be increased, unless an application is made for approval of a new CUP in accordance with the procedures set forth in this section and section 50-34

(4) Development of the use shall not be carried out until the applicant has secured all the permits and approvals required by this chapter, this Code, and any permits that may be required by regional, state or federal agencies.

(c) *Application for conditional use permit; requirements.* An application for a CUP may be submitted by the property owner or by the property owner's designated representative to the city. The application shall be accompanied by a concept plan prepared in accordance with the requirements of subsection (e) of this section. If a base zoning district amendment is required or requested, such rezoning application shall accompany the application for a CUP.

(d) *Approval process.*

(1) *Maximum of four steps.* The review process for a CUP shall include up to four steps:

a. Preapplication conference with the city manager or his designee (refer to section 50-36);

b. Adoption of ordinance granting a CUP;

c. Concept plan; and

d. Construction of project (after city approval of all required plans and plats).

(2) *Payment of all indebtedness attributable to the subject property.* Refer to section 50-36

(3) *Official submission date and completeness of application.* Refer to section 50-34

(4) *Supplemental requirements.* Refer to section 50-36

(e) *Concept plan.*

(1) *Purpose.* This section establishes a review process for conditional use permits. The purpose is to ensure that a development project is in compliance with all applicable city ordinances and guidelines prior to commencement of construction.

(2) *Applicability.* Submission and approval of a concept plan shall be required for all conditional use permits.

(3) *Building permit and certificate of occupancy.* A concept plan may be submitted in conjunction with a building permit application (this is a different application than the building permit plan that is discussed within this section). No building permit shall be issued until a concept plan and all other required engineering/construction plans are first approved by the city. No certificate of occupancy shall be issued until all construction and development conforms to the concept plan and engineering/construction plans, as approved by the city.

(4) *Extent of area that should be included in a concept plan.* When the overall development project is to be developed in phases, the area included within the concept plan shall include only the portion of the overall property that is to be developed/constructed.

(5) *Procedures and submission requirements for concept plan approval.* All concept plans shall be prepared by a qualified civil engineer, land planner, architect or surveyor, and it shall clearly show in detail how the site will be constructed (such as paving, buildings, landscaped areas, utilities, etc.). To ensure the submission of adequate information, the city is hereby empowered to maintain and distribute a separate list of specific requirements for the review of concept plan applications.

(6) *Review and approval of a concept plan.* The approval process for a concept plan shall generally be review by city staff, recommendation by the planning and zoning commission, and approval by the city council.

a. *City staff review of concept plans.*

1. Upon official submission of a complete application of a concept plan for approval, the city shall review the application. Specifically, the city manager, city engineer, and the building official or their designees shall review the concept plan prior to the concept plan being forwarded to the planning and zoning commission.

2. Concept plans shall be evaluated to ensure that all developments are, to the best extent possible, constructed according to the city's codes and ordinances.

3. Following city staff review, and following discussions regarding necessary revisions, the applicant shall resubmit additional copies of the corrected concept plan to the city manager or his designee.

4. The city manager or his designee shall then submit the corrected plan to the planning and zoning commission.

5. It should be noted that the city manager or his designee shall forward the original plan application to the commission if the corrected version is not resubmitted within the prescribed time period.

6. It should also be noted that a corrected plan that is incomplete or is otherwise not ready for consideration shall be subject to denial.

b. *Planning and zoning commission review of concept plans.*

1. All concept plan applications shall be reviewed by the planning and zoning commission.

2. The city manager, or his designee, shall schedule consideration of any concept plan application on the regular agenda of the planning and zoning commission within 30 calendar days after the application is received.

3. The planning and zoning commission shall review the concept plan and shall recommend to the city council approval, approval subject to certain conditions, or denial of the concept plan.

c. *City council review of and action on concept plans.*

1. All concept plan applications shall be reviewed by the city council after being reviewed by the planning and zoning commission.

2. The city manager, or his designee, shall schedule consideration of the concept plan application on the regular agenda of the city council.

3. The city council shall review the concept plan and shall approve, approve subject to certain conditions, or deny approval of the concept plan.

(7) *Revisions to the approved concept plan.*

a. *Minor revisions/amendments.*

1. It is recognized that final architectural and engineering design may necessitate minor changes in the approved concept plan. In such cases, the city manager, or his designee, shall have the authority to approve minor modifications to an approved concept plan. Such minor modifications submitted on an amended concept plan, which shall substantially conform to the previously approved concept plan.

2. Submission materials and requirements for approval of an amended concept plan shall be as determined by the city manager or his designee.

b. *Major revisions.* In the event of revisions that are more extensive in nature (i.e., do not conform to the description for minor amendments in subsection (e)(7)a of this section), a revised concept plan must be resubmitted, reviewed, and approved by the city manager or his designee. The city manager or his designee shall have the authority to determine whether a revised concept plan warrants a review and approval as outlined in this subsection (e).

3. Any proposed or existing building or land use that is newly established, enlarged, modified, structurally altered, or otherwise changed from the originally approved concept plan shall be deemed a major revision.

(8) *Effect of review/approval.* The concept plan shall be considered authorization to proceed with construction of the site provided all other required city approvals are obtained (such as final plat, engineering plans, etc.).

(9) *Validity, lapse, and reinstatement of concept plan.* Refer to section 50-37

(f) *Standards.*

(1) *Factors for consideration.* When considering applications for a conditional use permit, the city shall, on the basis of the concept plan and other information submitted, evaluate the impact of the conditional use on, and the compatibility of the use with, surrounding properties and neighborhoods to ensure the appropriateness of the use at a particular location. Specific considerations shall include the extent to which:

a. The proposed use at the specified location is consistent with the goals, objectives and policies contained in the adopted comprehensive plan.

b. The proposed use is consistent with the general purpose and intent of the applicable zoning district regulations.

c. The proposed use meets all supplemental standards specifically applicable to the use as set forth in this chapter.

d. The proposed use is compatible with and preserves the character and integrity of adjacent development and neighborhoods and, as required by the particular circumstances,

includes improvements or modifications either onsite or within the public rights-of-way to mitigate development-related adverse impacts, including, but not limited to:

1. Adequate ingress and egress to property and proposed structures thereon with particular reference to vehicular and pedestrian safety and convenience, and access in case of fire;
2. Off-street parking and loading areas;
3. Refuse and service areas;
4. Utilities with reference to location, availability, and compatibility;
5. Screening and buffering features to minimize visual impacts, and/or setbacks from adjacent uses;
6. Control of signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;
7. Required yards and open space;
8. Height and bulk of structure;
9. Hours of operations;
10. Exterior construction material and building design; and
11. Roadway adjustments, traffic control devices or mechanisms, and access restrictions to control traffic flow or divert traffic as may be needed to reduce or eliminate development-generated traffic on neighborhood streets.

e. The proposed use is not materially detrimental to the public health, safety, convenience and welfare, or results in material damage or prejudice to other property in the vicinity.

(2) *Conditions.* In approving the application, the planning and zoning commission may recommend, and the city council may impose, such additional conditions (e.g., hours of operation) as are reasonably necessary to assure compliance with the standards, purpose, and intent of this section, and in accordance with the rezoning procedures in section 50-34. Any conditions imposed shall be set forth in the ordinance approving the conditional use, and shall be incorporated into or noted on the concept plan. The city manager or his designee shall verify that the concept plan incorporates all conditions set forth in the ordinance authorizing the conditional use. The city shall maintain a record of such approved conditional uses and related conditions attached thereto.

(3) *Prohibition on waivers and variances.* The foregoing additional conditions (i.e., standards of development for the CUP) shall not be subject to variances that otherwise could be granted by the board of adjustments, nor may conditions imposed by the city council subsequently be waived or varied by the board of adjustments.

(g) *Other regulations.* The board of adjustments shall not have jurisdiction to hear, review, reverse, or modify any decision, determination, or ruling with respect to the specific land use designated by any conditional use permit.

(h) *Use regulations.* Uses allowed by CUPs are specified in section 50-82 (specifically shown with a "C" within the use charts).

(Ord. No. 2008-01, § 37, 2-4-2008)

Sec. 50-82. Use regulations (charts).

(a) *Conformance with the use charts.*

(1) *Generally.* The use of land and/or buildings shall be in accordance with those listed in the following use charts. No land or building shall hereafter be used and no building or structure

shall be erected, altered, or converted other than for those uses specified in the zoning district in which it is located. The legend for interpreting the permitted uses in the use charts are:

P	Designates use permitted in the zoning district indicated
(Blank)	Designates use prohibited (i.e., not allowed) in the zoning district indicated
C	Designates use may be permitted in the zoning district indicated by a CUP (also see section 50-81
‡	The land use is defined within section 50-2

(2) *Unlisted uses.* If a use is not listed (or is blank) in the use charts, it is not allowed in any zoning district (see subsection (a)(4) of this section).

(3) *Use chart organization.* The land uses are listed in the use charts in alphabetical order.

(4) *Classification of new/unlisted uses.* It is recognized that new types of land use will arise in the future, and forms of land use not presently anticipated may seek to locate in the city. In order to provide for such changes and contingencies, a determination as to the appropriate classification of any new or unlisted form of land use in the use charts shall be made as follows:

a. Initiation.

1. A person, city department, the planning and zoning commission, or the city council may propose zoning amendments to regulate new and previously unlisted uses.

2. A person requesting the addition of a new or unlisted use shall submit to the city manager or his designee, all information necessary for the classification of the use, including but not limited to the following:

(i) The nature of the use and whether the use involves dwelling activity, sales, services, or processing;

(ii) The type of product sold or produced under the use;

(iii) Whether the use has enclosed or outside storage and the amount and nature of the storage;

(iv) Anticipated employment typically anticipated with the use;

(v) Transportation requirements;

(vi) The nature and time of occupancy and operation of the premises;

(vii) The off-street parking and loading requirements;

(viii) The amount of noise, odor, fumes, dust, toxic materials and vibration likely to be generated;

(ix) The requirements for public utilities such as sanitary sewer and water and any special public services that may be required; and

(x) Impervious surface coverage.

b. The city manager, or his designee, shall refer the question concerning any new or unlisted use to the planning and zoning commission, requesting a recommendation as to the zoning

classification into which such use should be placed. The referral of the use interpretation question shall be accompanied by the statement of facts in subsection (a)(4)a.2 of this section. An amendment to this chapter shall be required as prescribed by section 50-34

c. The planning and zoning commission shall consider the nature and described performance of the proposed use and its compatibility with the uses permitted in the various districts and determine the zoning district or districts within which such use is most similar and should be permitted (by right or by CUP).

d. The planning and zoning commission shall transmit its findings and recommendations to the city council as to the classification proposed for any new or unlisted use. The city council shall approve or disapprove the recommendation of the planning and zoning commission or make such determination concerning the classification of such use as is determined appropriate based upon its findings. If approved, the new or unlisted use shall be amended in the use charts of subsection(b) of this section according to section 50-34

e. Standards for new and unlisted uses may be interpreted by the city manager, or his designee, as those of a similar use. When a determination of the appropriate zoning district cannot be readily ascertained, the same criteria outlined in subsection (a)(b) of this section shall be followed for determination of the appropriate district. The decision of the city manager, or his designee, may be appealed according to the process outlined in subsections (a)(4)a2 through (a)(4)d of this section.

(b) *Use charts.*

Types of Land Uses	Residential Zoning Districts										Nonresidential Zoning Districts								OT&MU	Parking ratio (Also see section 50-112
	AG	SF-20-E	SF-9	SF-6			D		MF		MHP	O		GR			C	LI		
Agriculture																				
Bulk grain and/or feed storage	P																C	C		1 space per 1,000 square feet
Farm (ranch, garden, crops, livestock, or orchard) ‡	P	P	P	P			P		P		P	P		P			P	P	P	None
Feed and grain store/farm supply store ‡	C													C			P	P	C	1 space per 500 square feet
Flour and other grain																		P		1 space per 1,000 square

mills																					feet
Livestock, wholesale/auction	C																				None
Livestock sales/auction	C																				None
Stable, commercial	C																	C			1 space per 1,000 square feet
Stables (private, principal or accessory use) ‡	P			C																	None
Residential																					
Accessory building/structure (business or industry) ‡												P		P			P	P		P	None
Accessory building/structure (residential) ‡	P	P	P	P			P		P											P	None
Accessory dwelling	P	P	P	C			C		C											P	None
Garage/accessory dwelling ‡	P	P	P	C			C		C											P	None
Caretaker's, guard's residence ‡	P	C							P			P		P			P	P		P	1 space per caretaker/guard
Dwelling, four-family (quadraplex) (defined under Multiple-family dwelling) ‡									P											P	2 spaces per dwelling
Dwelling, HUD code-manufactured home ‡											P									C	2 spaces per dwelling

Dwelling, industrialized home ‡	P	P	P	P			P		P		P							C	2 spaces per dwelling
Dwelling, multiple-family ‡									P									P	2 spaces per dwelling
Dwelling, single-family attached ‡							P		P									P	2 spaces per dwelling
Dwelling—Single-family detached ‡	P	P	P	P			P		P									P	2 spaces per dwelling
Dwelling, two-family, duplex or duplex townhome ‡							P		P									P	2 spaces per dwelling
Dwelling, zero-lot line/patio home ‡							P		P									P	2 spaces per dwelling
Home occupation ‡	P	P	P	P			P		P				P		P	P		P	None
Residential use ‡	P	P	P	P			P		P		P	C	C		C			P	2 spaces per dwelling
Private street subdivision	P	P	P	P			P		P				C		C			P	None
Office																			
Clinic, emergency care													P		P	P		C	1 space per 150 square feet
Clinic, medical and/or dental												P	P		P	P		P	1 space per 300 square feet
Credit agency												P	P		P	P		P	1 space per 300 square feet

Bank, savings and loan, or credit union (no motor bank services)											P		P			P	P		P	1 space per 300 square feet
Bank, savings and loan, or credit union (with motor bank services)											C		P			P	P		P	1 space per 300 square feet
Office, professional and general business ‡											P		P			P	P		P	1 space per 300 square feet
Office, parole-probation													P			P	P		C	1 space per 300 square feet
Office showroom/warehouse ‡											C		C			P	P		P	1 space per 300 square feet
Security monitoring company (no outside storage)											P		P			P	P		P	1 space per 300 square feet
Telemarketing agency											C		C			C	P		C	1 space per 250 square feet
Telephone exchange/switching station ‡	C										P		P			P	P		C	1 space per 500 square feet
Temporary real estate field office	P	P	P	P			P		P	P	P		P			P	P		P	4 spaces
Model home (including sales office)	P	P	P	P			P		P	P	P		P			C	C		P	2 spaces per model
Personal and Business																				

Ambulance service													C			P	P	C	1 space per 500 square feet
Automobile driving school (including defensive driving)												C	P			P	P	P	1 space per classroom seat
Barber/beauty shop (no related school/college)												C	P			P	P	P	1 space per 200 square feet
Bed and breakfast inn ‡	P	C	C	C			C	C				C	P			P		P	2 spaces plus one per guest room
Check cashing service													P			P	P	P	1 space per 100 square feet
Dance hall/dancing facility ‡													C			C		P	1 space per 100 square feet
Dance/drama/music schools (performing arts, martial arts)												C	P			P	P	P	1 space per 100 square feet
Fortunetelling and similar activities ‡																	C		1 space per 300 square feet
Funeral home ‡													C			P	P	C	See section 50-112
Greenhouse (non-retail/hobby)	P	P	P	P			P	P	P									P	None
Health club (indoor)												C	P			P	P	P	One space per 300 square

																			feet
Health club (outdoor)													P		P	P		P	One space per 300 square feet
Hotel/motel ‡													P		P	P		P	See section 50-112
Laundromat/washateria/ self-service ‡													P		P	P		P	1 space per 200 square feet
Laundry/dry cleaning (retail only, drop off/pick up) ‡												C	P		P	P		P	1 space per 200 square feet
Mailing service (private)													P		P	P		P	1 space per 200 square feet
Pharmacy (retail only)												C	P		P	P		P	1 space per 200 square feet
Recreational vehicle park											C								
Rehabilitation care facility (halfway house) ‡	C	C	C	C			C	C		C	C		P		C P	P		C	Greater of 1 per three beds or 1.5 spaces per dwelling
Rehabilitation care institution (business) ‡	C	C	C	C			C	C			C		P		P	P		P	Greater of 1 per three beds or 1.5 spaces per dwelling
Seamstress, dressmaker												C	P		P	P		P	1 per 200

or tailor (retail only)																						square feet
Sexually oriented business																			C			
Tattoo or body piercing studio ‡															C			P				1 space per 200 square feet
Wedding chapel															P			P	P		P	1 per four seats
Retail																						
Antique shop (no outside sales or storage) ‡															P			P	P		P	1 space per 500 square feet
Antique shop (with outside storage)															C			P	P		P	1 space per 500 square feet
Apparel shop															P			P	P		P	1 space per 200 square feet
Art gallery/museum/dealer ‡														C	P			P	P		P	1 space per 500 square feet
Artist or photography studio														C	P			P	P		P	1 space per 500 square feet
Bakery, retail (eating establishment, no drive-through) ‡														C	P			P	P		P	1 space per 200 square feet
Bakery, retail (with drive-through)															P			P	P		P	1 space per 200 square

																				feet
Bakery (wholesale) ‡																P	P		P	1 space per 500 square feet
Bird and pet shops (retail only)														P		P	P		P	1 space per 200 square feet
Book/stationery shop (retail only) ‡														P		P	P		P	1 space per 200 square feet
Building material sales/lumber yard ‡														C		P	P		P	1 space per 1,000 square feet
Carpenter shop														C		P	P		P	1 space per 500 square feet
Catering service														P		P	P		P	1 space per 500 square feet
Consignment shop														C		P	P		P	1 space per 300 square feet
Convenience store (with or without gasoline sales) ‡														P		P	P		P	See section 50-112
Copy shop ‡													C	P		P	P		P	1 space per 200 square feet
Drinking establishment													C	P		P	P		P	

Drug store (retail only)													P			P	P	P	1 space per 200 square feet
Eating establishment (with drive-in service) ‡													C			P	P	P	Greater: 1 per 100 square feet; 1 per 3 seats based on max seating capacity or; 1 per 12 spaces
Eating establishment (with no drive-through service) ‡												C	P			P	P	P	
Eating establishment (with drive-through service) ‡													P			P	P	P	
Electronic goods (retail only)													P			P	P	P	1 space per 200 square feet
Florist shop (retail only) ‡												C	P			P	P	P	1 space per 200 square feet
Food or grocery store													P			P	P	P	1 space per 500 square feet
Furniture and appliance store (retail only) ‡													P			P	P	P	1 space per 500 square feet
Furniture store (new and used) ‡													P			P	P	P	1 space per 200 square feet

General retail stores (no outside storage)													P			P	P	P	1 space per 200 square feet
Gift or card shop (retail only)												C	P			P	P	P	1 space per 200 square feet
Hardware store													P			P	P	P	1 space per 400 square feet
Hobby and crafts store (retail only)												C	P			P	P	P	1 space per 200 square feet
Home improvement center													P			P	P	P	1 space per 400 square feet plus one per 1,000 square feet of warehouse area
Jewelry store													P			P	P	P	1 space per 200 square feet
Market, open air, flea																C	P	P	1 space per 200 square feet
Meat and fish market (retail only)													P			P	P	P	1 space per 200 square feet
Motion picture studios, commercial films													C			P	P	P	1 space per 300 square feet

Motion picture theater (indoors)													P			P	P	P	See section 50-112
Nursery ‡													P			P	P	P	1 space per 1,000 square feet of sales area
Garden shop ‡													P			P	P	P	1 space per 200 square feet
Painting and refinishing shop													C			P	P	P	1 space per 500 square feet
Piano and musical instruments (retail only)													P			P	P	P	1 space per 200 square feet
Shoe repair shop (retail only)													P			P	P	P	1 space per 200 square feet
Sign shop (small scale, such as a storefront; includes sign and banner making for retail sale only; no outside storage)													P			P	P	P	1 space per 300 square feet
Stone monuments and gravestones, engraving and retail sales only													C			P	P	C	1 space per 500 square feet
Trophy engraving													P			P		P	1 space per 300 square feet
Upholstery shop (nonauto)													P			P	P	P	1 space per 200 square

																						feet
Used merchandise														P			P	P		P		1 space per 200 square feet
Video rental/sales														P			P	P		P		1 space per 200 square feet
Transportation and Auto Services																						
Airport or landing field ‡	C																	C				1 space per 500 square feet
All-terrain vehicle (go-carts) dealer/sales ‡														P			P	P		P		1 space per 300 square feet
Auto accessories (retail sales only)														P			P	P		P		1 space per 200 square feet
Auto body repair/painting														C			P	P		P		1 space per 200 square feet
Auto dealer (new, auto servicing and used auto sales as accessory uses only, w/outdoor sales) ‡														P			P	P		P		See section 50-112
Auto dealer, primarily used auto sales w/outdoor sales ‡														C			P	P		P		See section 50-112
Auto glass repair/tinting														P			P	P		P		1 space per 200 square feet

Auto interior shop/upholstery													C			P	P	P	1 space per 200 square feet
Auto muffler shop													C			P	P	P	1 space per 200 square feet
Auto paint shop													C			P	P	P	One per 200 square feet
Auto parts sale (new or rebuilt; no outside storage, no outside display, no repair)													P			P	P	P	1 space per 200 square feet
Auto parts sale (new or rebuilt; with outside storage or display)													C			P	P	P	1 space per 200 square feet
Auto rental													P			P	P	P	1 space per 200 square feet
Auto repair (major) ‡													C			P	P	C	1 space per 200 square feet
Auto repair (minor) ‡													P			P	P	P	1 space per 200 square feet
Auto storage or auto auction ‡																C	P	C	1 space per 1,000 square feet
Auto tire sales (indoor)													P			P	P	P	1 space per 200 square feet

Auto wrecker service																P	P		C	1 space per 200 square feet
Automobile assembly																	P		C	1 space per 1,000 square feet
Automobile parts manufacturing																C	P		C	1 space per 1,000 square feet
Automobile wash (full service/detail shop) ‡													P			P	P		P	3 space per washing capacity of module
Automobile wash (self-service) ‡													C			P	P		P	3 space per washing capacity of module
Bike sales and/or repair													P			C	P		P	1 space per 500 square feet
Bus or truck storage																P	P		C	1 space per 1,000 square feet
Gasoline station													P			P	P		P	See section 50-112
Motor freight transportation, storage, and terminal																P	P		C	See section 50-112
Motorcycle sales/dealer ‡													P			P	P		P	See section 50-112

Parking lot or garage for passenger cars and trucks of less than one-ton capacity ‡	C		C	C			C		C			C		P			P	P		C	None
Personal watercraft sales (new/repair)														P			P	P		P	See section 50-112
Railroad team tracks, unloading docks, and spurs																	P	P		C	None
Railroad yards, round house or shop																	C	P		C	1 space per 1,000 square feet
Taxi/limousine service														C			P	P		C	1 space per 1.5 automobiles in service
Tire sales (indoors, no outside storage) ‡																	P	P		P	1 space per 1,000 square feet
Tire sales (outdoors, with outside storage) ‡																	C	P		C	1 space per 1,000 square feet
Transfer station (refuse/pick-up) ‡	C																C	C			1 space per 500 square feet
Transit terminal ‡																	P	P		C	See section 50-112
Truck and bus leasing ‡																	P	P		C	1 space per 1,000 square feet

Truck sales and services (heavy trucks) ‡																P	P		C	1 space per 1,000 square feet
Truck stop ‡																C	P		C	1 space per 1,000 square feet
Truck terminal ‡																P	P		C	See section 50-112
Amusement and Recreation																				
Amusement, commercial (indoor) ‡													C		C	P	P		C	1 space per 100 square feet
Amusement, commercial (outdoor) ‡													C			P	P		C	10 spaces plus 1 per 500 square feet over 5,000 square feet of building and recreation area
Amusement, commercial, temporary, (e.g., carnival, haunted house). (Note: Allowed by building official for up to 10 days) ‡										C						C	P		C	Determined by P and Z
Amusement devices/arcade (4 or more devices, indoors only) ‡													C			P	P		C	1 space per game table plus one per amusement device
Billiard/pool Facility (4 or													C			P	P		C	1 space per 200 square

more tables)																			feet
Bingo facility													C			P	P	P	1 space per 200 square feet
Bowling alley (air conditioned and soundproofed)													P			P	P	C	4 spaces per lane
Dinner theatre													P			P	P	P	1 space per three seats or bench seating space
Drive-in theater																C	C	C	1 space per speaker
Golf driving range	C												C			P	P	C	See section 50-112
Golf course (private) ‡	C	C	C	C			C	C			C		C			C	C	C	6 spaces per hole
Golf course (publicly owned) ‡	P	P	P	P			P	P		P	P		P			P	P	P	6 spaces per hole
Playfield or stadium (private)	C												C			P	P	P	1 space per three seats
Recreational vehicle park/campground ‡	C															C	P	C	1.5 per RV pad
Skating rink													P			P	P	P	1 space per 200 square feet, plus 1 per 3 seats based on max capacity

Swimming pool, private (use by membership) ‡	P	P	P	P			P		P		P	P	P			P	P		P	1 space for each 100 square feet of gross water surface and deck area
Swimming pool, commercial ‡												C	P			P	P		P	1 space per 100 square feet of gross water surface and deck area
Tennis court (private/not lighted)	P	P	P	P			P		P		P	P	P			P	P		P	2 spaces per court
Tennis court (private/lighted)	C	C	C	C			C		C		C		C			C	C		C	2 spaces per court
Institutional/Governmental																				
Adult day care (business)	See Household care facility																			
Antenna (commercial)	See section 50-116																			
Antenna (noncommercial)	See section 50-116																			
Armed services recruiting center												P	P			P	P		P	1 space per 300 square feet
Assisted living facility (continuing care retirement community) ‡									P			C	P			P			P	1.5 spaces per dwelling unit plus any additional space for accessory uses

Auction house													C			P	P	C	1 space per 100 square feet
Broadcast station (with tower)	See section 50-116																		
Broadcast towers (commercial)	See section 50-116																		
Cellular communications tower/PCS	See section 50-116																		
Cemetery and/or mausoleum ‡	C	C	C	C			C		C		C	C	C			C	C	C	1 space per 5,000 square feet of land
Child day care center (business) ‡									C			C	P			P		P	1 space per three children
Church/temple/place of worship ‡	P	P	P	P			P		P		P	P	P			P	P	P	1 space per four seats in sanctuary
Civic center (municipal) ‡	P	P	P	P			P		P		P	P	P			P	P	P	10 spaces plus 1,300 square feet above 2,000
Civic club												P	P			P	P	P	See section 50-112
Community center (public)	C	C	C	C			C		C		C	P	P			P	P	P	See section 50-112
Community home ‡	P	P	P	P			P		P		P							P	1 space per 300 square feet
Community or social	C	C	C	C			C		C		C	P	P			P	P	P	1 space per 300 square

buildings ‡																					feet
Country club (private) ‡	C	C	C	C			C		C			C	C			C	C		P		10 spaces plus one per 300 square feet above 2,000
Earth satellite dish (private, less than 3 feet in diameter)	See section 50-116																				
Electric power plant																C	P		C		1 space per 1,000 square feet
Electrical substation ‡	C	C	C	C			C		C		C	C	C			C	C		C		1 space per 1,000 square feet
Exhibition hall ‡													C			P	P		C		1 space per 100 square feet
Fair ground or rodeo ‡	C															C	C		C		1 space per 1,000 square feet of land area
Family home (child care in place of residence) ‡	P	P	P	P			P		P		P	P	P			P			P		1 space per 10 children plus 1 space per teacher
Fraternal organization ‡												C	P			P	P		P		10 spaces plus 1 per 300 square feet above 2,000
Fraternity or sorority house ‡							C		C			C	C			C			C		2 spaces per bedroom

Governmental building or use (county, state or federal) ‡	C	C	C	C			C	C	C	P	P			P	P	P	1 space per 300 square feet
Heliport ‡										C	C			C	C	C	3 spaces
Helistop										C	C			C	C	C	3 spaces
Hospital ‡										C	P			P	P	P	1 space per bed
Household care facility ‡	P	P	P	P			P	P	P							P	1 space per 6 clients
Household care institution											P			P	P		1 space per 6 clients
Institution for alcoholic, narcotic, or psychiatric patients ‡											C			C	P	C	1 space per 200 square feet
Institution of religious, educational or philanthropic nature	C	C	C	C			C	C	C	C	P			P	P	P	1 space per 200 square feet
Municipal facility or use ‡	P	P	P	P			P	P	P	P	P			P	P	P	1 space per 300 square feet
Museum										C	P			P	P	P	See section 50-112
Park and/or playground (private) ‡	P	P	P	P			P	P	P	P	P			P	P	P	
Park and/or playground (public, municipal) ‡	P	P	P	P			P	P	P	P	P			P	P	P	
Penal or correctional institutions	C													P	P	C	1 space per 500 square

																				feet
Post office (governmental)	P	P	P	P			P		P		P	P	P			P	P		P	10 plus 1 per 200 square feet
Non-city public assembly (auditorium, gymnasium, stadiums, meeting halls, etc.)													P			P	P		C	1 space per 4 seats
Radio, television and communications towers	See section 50-116																			
Rectory/parsonage	P	P	P	P			P		P		P	P	P			P	P		P	5 spaces, plus 1 per bedroom
Retirement housing for the elderly ‡	See Assisted living facility																			
Riding academy	P	C	C	C			C		C		C	C	C			C	P		C	1 space per five stalls
Sanitary landfill (private)																	C			1 space per ten acres
School, business (e.g., barber/beauty/cosmetology)													P			P	P		P	1 space per three students, based on design
School, college or university	C	C	C	C			C		C		C	C	P			P	P		P	10 per classroom plus 2 per office
School, commercial trade (vocational) ‡												C	P			P	P		P	1 space per student

School, public or denominational ‡	P	P	P	P			P		P		P	P				P	P		P	See section 50-112
School, other than public or denominational ‡												C		P			P	P	P	
Sheltered care facility ‡									C					C			C	C	C	1 space per three beds or 1.5 per dwelling
Sign, all types (defined within the referenced section) ‡	See ch. 34 of this Code																			
Skilled nursing facility ‡									P			C		C			P			C	See section 50-112
Studio for radio and/or television (no towers) ‡												P		P			P	P	P	1 space per 200 square feet
Commercial and Wholesale Trade																				
Animal kennel (outdoor pens)	P																C	P		1 space per 500 square feet
Appliance repair														P			P	P	P	1 space per 500 square feet
Book binding																	P	P	P	1 space per 500 square feet
Carpet and rug cleaning plant														C			P	P	C	1 space per 1,000 square feet

Cattle, swine, or poultry feedlot (CAFO)	C																C			1 space per 5,000 square feet of land
Cleaning plant (commercial laundry) ‡													C			P	P	C		1 space per 1,000 square feet
Communication equipment sales/service (installation and/or repair, no outdoor sales or storage or towers/antennae)													P			P	P	P		1 space per 1,000 square feet
Construction contractor with storage yard	C															P	P			1 space per 1,000 square feet of land
Contractor's office/sales, no outside storage including vehicles													P			P	P	P		1 space per 1,000 square feet of land
Contractor's temporary on-site construction office (only with permit from building official.)	P	P	P	P			P	P		P	P		P			P	P	P		None
Distribution center ‡																P	P	C		1 space per 1,000 square feet
Electric repair, (domestic equipment and autos)												C	P			P	P	P		1 space per 1,000 square feet
Electronic assembly																P	P	C		1 space per 1,000 square feet

Electro-plating/electro-typing																P	P		C	1 space per 1,000 square feet
Exterminator service/company (no outdoor sales or storage)													P			P	P		P	1 space per 300 square feet
Fix-it shops, small engine, saw filing, mower sharpening													C			P	P		C	1 space per 500 square feet
Fur/hide tanning and finishing																	C			1 space per 1,000 square feet
Heating and air conditioning sales/services													C			P	P		C	1 space per 1,000 square feet
Iron works (ornamental)																C	P			1 space per 1,000 square feet
Lawnmower repair and/or sales													C			P	P		C	1 space per 500 square feet
Loading or storage tracks																P	P		C	None
Locksmith													P			P	P		C	1 space per 500 square feet
Machine shop																P	P		C	1 space per 1,000 square feet
Maintenance and repair service for													C			P	P		C	1 space per 500 square

buildings/janitorial																				feet
Manufactured home display or sales (new or used) ‡																C	P		C	1 space per 1,000 square feet
Mattress, making and renovating																P	P		C	1 space per 1,000 square feet
Milk depot, wholesale																P	P			1 space per 1,000 square feet
Mini-warehouse/self storage ‡													C			P	P		C	See section 50-112
Mortuary													C			P	P		C	See section 50-112
Moving and storage company																P	P		C	1 space per 1,000 square feet
News printing																P	P		C	1 space per 1,000 square feet
Outdoor sales as a primary use ‡													C			P	P			1 space per 5,000 square feet of land area
Pawn shop ‡																P	P		C	1 space per 200 square feet
Pet and animal grooming shop (no outside kennels) ‡													P			P	P		P	1 space per 200 square feet

Plumbing shop													C			P	P		C	1 space per 200 square feet
Printing equipment, supplies and repairs													C			P	P		C	1 space per 500 square feet
Propane sales filling (retail)													C			P	P		C	1 space per 200 square feet
Publishing and printing company													C			P	P		P	1 space per 500 square feet
Quick lube/oil change/minor inspection													P			P	P		P	1 space per 200 square feet
Salvage storage yard ‡																	C			5 per acre
Scientific and industrial research laboratories (hazardous) ‡																C	P			1 space per 300 square feet
Scientific and industrial research laboratories (nonhazardous) ‡												P	C			P	P		P	1 space per 300 square feet
Scrap metal storage yard																	C			5 space per acre
Security systems installation company													C			P	P		C	1 space per 300 square feet
Sheet metal shop																P	P			1 space per 1,000 square feet

Storage of cement, sands and gravel	C																C	P			1 space per 5,000 square feet of storage area
Storage of used lumber and building materials																	C	P			1 space per 5,000 square feet of storage area
Taxicab storage and repair																	P	P			1 space per 500 square feet
Taxidermist	C													C			P	P			1 space per 500 square feet
Tool and machinery rental (indoor storage only) ‡														P			P	P		P	1 space per 200 square feet
Tool and machinery rental (with outdoor storage) ‡														C			P	P		C	1 space per 200 square feet
Vacuum cleaner sales and repair ‡														P			P	P		P	1 space per 200 square feet
Veterinarian clinic (indoor kennels) ‡	P													P			P	P		P	1 space per 500 square feet
Veterinarian clinic (outdoor kennels or pens) ‡	C																C	P			1 space per 500 square feet
Warehouse (defined under storage or														C			P	P		C	1 space per 1,000 square

wholesale warehouse) ‡																					feet
Welding shop														C			P	P		C	1 space per 1,000 square feet
Wholesale trade, nondurable goods														C			P	P		C	1 space per 1,000 square feet
Woodworking shops														C			P	P		C	1 space per 1,000 square feet
Wrecking materials yard ‡																		C			1 space per 1,000 square feet
Light and Heavy Manufacturing/Industrial																					
Acid manufacture																		C			1 space per 1,000 square feet
Adhesives and sealants manufacture																	C	C			1 space per 1,000 square feet
Aircraft parts manufacture																		P			1 space per 1,000 square feet
Airplane repair and manufacturing																		P			1 space per 1,000 square feet
Animal processing and slaughter																	C	C			1 space per 1,000 square feet

Any manufacture or industrial process not listed and not prohibited by law																C	C				1 space per 1,000 square feet
Artificial flower manufacture														C			P	P			1 space per 1,000 square feet
Asphalt paving and roofing material manufacture																		C			1 space per 1,000 square feet
Awning manufacture, cloth, metal and wood																	P	P			1 space per 1,000 square feet
Bag manufacturing																	P	P			1 space per 1,000 square feet
Battery manufacture																		C			1 space per 1,000 square feet
Bleaching/chorine powder manufacture																		C			2 space per 1,000 square feet
Boiler manufacture and repair																		P			1 space per 1,000 square feet
Bottling works																	P	P			1 space per 1,000 square feet
Broom manufacture																	P	P			1 space per 1,000 square feet

Candy and other confectionary products manufacture													C			P	P			1 space per 1,000 square feet
Canning and preserving factory																C	P			1 space per 1,000 square feet
Canvas and related products manufacture																P	P			1 space per 1,000 square feet
Casein manufacture																	C			1 space per 1,000 square feet
Celluloid and similar cellulose manufacture																	C			1 space per 1,000 square feet
Cement manufacture																	C			1 space per 1,000 square feet
Ceramic products manufacture													C			P	P			1 space per 500 square feet
Chalk manufacture																	C			1 space per 1,000 square feet
Chemicals (agricultural) manufacture																	C			1 space per 1,000 square feet
Chemicals (industrial) manufacture																	C			1 space per 1,000 square feet

Clothing manufacture																P	P			1 space per 500 square feet
Coffin manufacture																C	P			1 space per 1,000 square feet
Cold storage plants/locker																P	P			1 space per 1,000 square feet
Concrete or asphalt mixing/batching plant (permanent) ‡																	C			1 space per 5,000 square feet of land
Concrete or asphalt mixing/batching plant (temporary) ‡													C			P	P			1 space per 5,000 square feet of land
Crematory																	C			1 space per 1,000 square feet
Culvert manufacture																	C			1 space per 1,000 square feet
Cutlery, handtools and general hardware manufacture																C	P			1 space per 1,000 square feet
Dairy products manufacture																C	P			1 space per 1,000 square feet
Distillation of liquors, spirits, etc. (brewery)																	C			1 space per 1,000 square feet

Dye manufacture																		C			1 space per 1,000 square feet
Dyeing plant																	C	P			1 space per 1,000 square feet
Electric lamp manufacture																	C	P			One per 1,000 square feet
Elevator manufacture																		P			1 space per 1,000 square feet
Enameling and painting																	C	P			1 space per 1,000 square feet
Engraving plant																	P	P			1 space per 1,000 square feet
Envelope manufacture																	P	P			1 space per 1,000 square feet
Farm/garden machinery and equipment manufacture																	C	P			1 space per 1,000 square feet
Fats and oils (animal) manufacture																					1 space per 1,000 square feet
Feed manufacture																	C	C			1 space per 500 square feet
Felt manufacture																		C			1 space per 1,000 square

																					feet
Food processing ‡																	C	P			1 space per 1,000 square feet
Footwear manufacture																	C	P			1 space per 500 square feet
Foundry, all types																					1 space per 1,000 square feet
Furnace manufacture																		C			1 space per 1,000 square feet
Fixtures manufacture																	C	P			1 space per 1,000 square feet
Furniture manufacture																	C	P			1 space per 1,000 square feet
Gases (industrial) manufacture																		C			1 space per 1,000 square feet
Glucose manufacture																		C			1 space per 1,000 square feet
Hair products factory (other than human)																		C			1 space per 1,000 square feet
Heavy machinery sales and storage ‡																	C	P			1 space per 1,000 square

																					feet
Ice cream/ice manufacture																	P	P			1 space 1,000 square feet
Kerosene manufacture or storage																		C			1 space per 1,000 square feet
Laboratory equipment manufacturing ‡																		C			1 space per 1,000 square feet
Leather products manufacture																	C	C			1 space per 1,000 square feet
Lumber mill/yard																		C			1 space per 1,000 square feet
Machinery manufacture																	C	P			1 space per 1,000 square feet
Marble working and finishing																	C	P			1 space per 1,000 square feet
Meat packing plant																		C			1 space per 1,000 square feet
Metal cans and shipping containers manufacture																	C	P			1 space per 1,000 square feet
Metal products, stamping and manufacture																	C	P			1 space per 1,000 square feet

Mirror resilvering																	C	P			1 space per 200 square feet
Office equipment manufacture																	P	P			1 space per 1,000 square feet
Oil compounding and barreling																		C			1 space per 1,000 square feet
Oilcloth manufacture																		C			1 space per 1,000 square feet
Orthopedic, prosthetic, surgical appliances and supplies manufacture																	P	P			1 space per 1,000 square feet
Paint manufacture and/or mixing																	C	P			1 space per 1,000 square feet
Paper and paper pulp manufacture																		C			1 space per 1,000 square feet
Paper products and paper box manufacture																	P	P			1 space per 1,000 square feet
Pecan processing																	C	P			1 space per 1,000 square feet
Petroleum and petroleum products refining																					1 space per 1,000 square feet

Petroleum distribution/storage ‡																	C	P			1 space per 1,000 square feet
Plastic products, molding, casting and shaping																	P	P			1 space per 1,000 square feet
Poultry hatchery																					1 space per 1,000 square feet
Poultry slaughtering and processing																					1 space per 1,000 square feet
Printing ink manufacture																		P			1 space per 1,000 square feet
Reduction of fats, ores, metals, garbage, offal, etc.; rendering plant																					1 space per 1,000 square feet
Rock quarries, sand, gravel and earth excavations or extractions	C																	C			1 space per acre
Rug and carpet manufacture																	C	P			1 space per 1,000 square feet
Sand, gravel, or stone storage (including sales) ‡	C																C	P			1 space per 1.5 employees, plus five per acre
Shellac and varnish																		C			1 space per 1,000 square

manufacture																					feet
Sign manufacturing (no outside storage)																	C	P			1 space per 1,000 square feet
Sign manufacturing (with outside storage)																	C	P			1 space per 1,000 square feet
Snuff manufacture																		C			1 space per 1,000 square feet
Soap, detergents, cleaning preparations manufacture																		C			1 space per 1,000 square feet
Starch manufacture																		C			1 space per 1,000 square feet
Steel works, blast furnaces and rolling mills																		C			1 space per 1,000 square feet
Stone cutting or crushing																		C			1 space per 5,000 square feet of land area
Stone, clay, glass and concrete Products (other than handicrafts) manufacture																		C			1 space per 1,000 square feet
Textile products manufacture																	C	P			1 space per 1,000 square feet

Tire retreading and recapping																	C	P			1 space per 1,000 square feet
Truck manufacture																		P			One per 1,000 square feet
Waste paper products manufacture																		P			1 space per 1,000 square feet
Water distillation																	P	P			1 space per 1,000 square feet
White lead manufacture																		C			1 space per 1,000 square feet
Wood container manufacture																	C	P			1 space per 1,000 square feet
Wood distillation (manufacture of tar, charcoal, turpentine and similar																		C			1 space per 1,000 square feet
Wood preserving manufacture and treatment																		C			1 space per 1,000 square feet
Wood products manufacture																	C	P			1 space per 1,000 square feet

(Ord. No. 2008-01, § 38, 2-4-2008; Ord. No. 2010-09, § 2, 5-3-2010; Ord. No. 2012-18, § 2, 7-2-2012; Ord. No. 2013-23, § 2, 2-2-2013; Ord. No. 2013-19, § 2, 11-4-2013)

Sec. 50-83. Summary of area regulations by district.

Table 50-83-1

Area Regulations Summary for Residential Districts

Area Requirements		AG	SF-20	SF-9	SF-6	PD SF PH, ZL
Size of lots	Minimum lot area	One acre (43,560 square feet)	20,000 square feet	9,000 square feet	6,000 square feet	4,000 square feet *Note: Min. project size 3 acres max density of ten du per acre
	Minimum lot width	100 feet	100 feet	75 feet	50 feet	40 feet
	Minimum Lot Depth	200 feet	150 feet	100 feet	100 feet	100 feet
Size of yards	Minimum front yard	60 feet	35 feet	25 feet	20 feet, 25 feet arterial	20 feet, 25 feet arterial
	Minimum side yard	30 feet	25 feet	5 feet; 15 feet for corner lot, 25 feet arterial	5 feet; 15 feet for corner lot, 25 feet arterial	5 feet or one side—0 feet; other side 10 feet; 15 feet corner
	Minimum rear yard	25 feet	20 feet; 25 feet for rear entry garage	15 feet, 25' feet arterial, 5 feet for 20 feet alley, 7.5 feet for 15 feet alley	15 feet, 25 feet arterial, 5 feet for 20 feet alley, 7.5 feet for 15 feet alley	15 feet or as required in section 50-80
Maximum lot coverage		40%	40%	40%	45%	n/a
Minimum floor area per dwelling unit		1,600 square feet	1,600 square feet	1,200 square feet	900 square feet	1,400 square feet

Table 50-83-1

Area Regulations Summary for Residential Districts

(Continued)

Area Requirements		D	PD-SFA	MF	MHP
Size of lots	Minimum lot area	10,200 square feet or 6,000 square feet per side on duplex townhomes	3,600 square feet *Note: Min. project size 5 acres, max. density 12 units per gross acre	20-26 units per acre depending on carports, 1,816 per dwelling unit **Note: Min project size 10 acres	4,000 square feet ***Note: Max project size 35 acres, min. project size 3 acres, no park less than 20 spaces, max. density 10 spaces per gross acre
	Minimum lot width	85 feet or 45 feet duplex townhome lot	25 feet	120 feet	40 feet
	Minimum lot depth	100 feet	100 feet	200 feet	80 feet
Size of yards	Minimum front yard	25 feet	20 feet, 35 feet arterial	25 feet, 35 feet arterial	20 feet from public street; ten feet from private street
	Minimum side yard	Five feet; 15 feet for corner lot, 25 feet arterial	0, 15 feet corner, 25 feet arterial See section 50-80	15 feet; see section 50-73 for setbacks related to height when MF adjacent to other residential	10 feet, 20 feet between units, 20 feet zoning boundary, 15 feet for corner lot; see section 50-74
	Minimum rear yard	15 feet, 25 feet arterial, five feet for 20 feet alley, 7.5 feet for 15 feet alley	10 feet; 25 feet for rear entry garage see section 50-80	15 feet, 25 feet arterial, 60 feet adjacent to other residential, 20 feet with alley	10 feet; 20 feet from any zoning district boundary line; 20 feet for rear entry garage
Maximum lot coverage		45%	70%	50%	50%

Minimum floor area per dwelling unit	900 square feet	See section 50-80	See section 50-73	750 square feet

Table 50-83-2

Area Regulations Summary for Nonresidential and Mixed Use Districts

Area requirements		O	GR
Size of lots	Minimum lot area	6,000 square feet	6,000 square feet
	Minimum lot width	60 feet	60 feet
	Minimum lot depth	100 feet	100 feet
Size of yards	Minimum front yard	25 feet, 35 feet arterial	25 feet, 35 feet arterial
	Minimum side yard	5 feet; 15 feet corner, 25 feet arterial see section 50-75 feet for setback standards from residential	5 feet, 15 feet corner, 25 feet arterial see section 50-76 feet for other setback standards
	Minimum rear yard	15 feet, 25 feet arterial, 60 feet adjacent to other residential, 20 feet with alley	15 feet, 25 feet arterial, 60 feet adjacent to other residential, 20 feet with alley
Maximum lot coverage		50 percent	50%, 80% impervious coverage

Table 50-83-2

Area Regulations Summary for Nonresidential and Mixed Use Districts (Continued)

Area	C	LI	OT and MU

Requirements				Residential Uses	Nonresidential Uses
Size of lots	Minimum lot area	10,000 square feet	5,000 square feet	5,000 square feet, duplex 7,000	5,000 square feet
	Minimum lot width	60 feet; 120 feet for any sites with frontage	50 feet	50 feet	50 feet
	Minimum lot depth	100 feet; 150 feet for any sites with frontage along U.S. 59 or Loop 287	100 feet	100 feet	100 feet
Size of yards	Minimum front yard	25 feet, 35 feet arterial	25 feet, 35 feet arterial'	SF shall meet SF-6 standards. Duplex shall meet duplex standards. Mf shall meet MF standards	20 feet or as specified in section 50-79
	Minimum side yard	10 feet; see section 50-77 for other setback standards	25 feet; see section 50-78 for other setback standards	same	See section 50-79
	Minimum rear yard			same	
Maximum lot coverage		60% for buildings; 90% impervious coverage	60% for buildings; 90% impervious coverage	n/a	n/a
Maximum FAR		2:1	2:1	n/a	n/a

(Ord. No. 2008-01, app. A, 2-4-2008)

Secs. 50-84—50-111. Reserved.

ARTICLE IV. DEVELOPMENT STANDARDS

Sec. 50-112. Off-street parking and loading requirements.

Sec. 50-113. Landscape requirements.

Sec. 50-114. Accessory buildings and related use regulations.

Sec. 50-115. Screening, buffering and fencing requirements.

Sec. 50-116. Supplemental regulations.

Sec. 50-117. Home occupation regulations.

Sec. 50-112. Off-street parking and loading requirements.

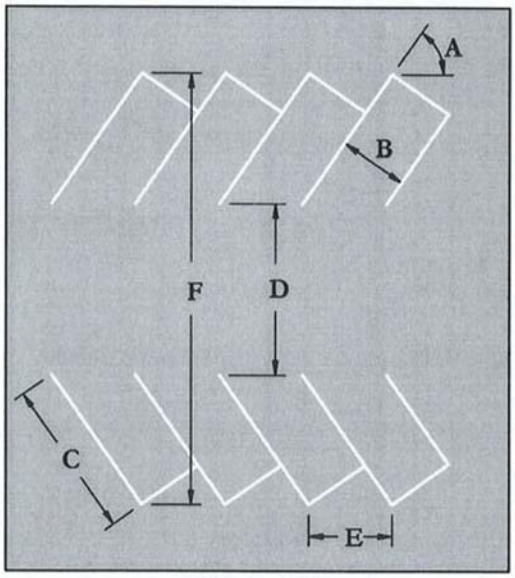
(a) *Purpose.* The purpose of this article is to secure safety from fire, panic, and other dangers; to lessen congestion on public streets; to facilitate the adequate provision of transportation; to conserve the value of buildings; and to encourage the most appropriate and efficient use of land. The minimum off-street parking and loading shall be provided as set forth in the following schedules and provisions.

Table 50-112-1

MINIMUM REQUIREMENTS FOR PARKING SPACE CONFIGURATION, ARRANGEMENT, SIZE AND CIRCULATION

A	B	C	D		E	F
Parking Angle (in degrees)	Stall Width (in feet)	Stall Depth (in feet)	Aisle Width for One-Way Traffic (in feet)	Aisle Width for Two-Way Traffic (in feet)	Curb Length Per Car (in feet)	Parking Lot Width (curb-to-curb, in feet)
0º	8.0	20.0	12.0	24.0	23.0	
30º	9.0	17.3	12.0	24.0	18.0	37.5
45º	9.0	19.6	13.0	24.0	12.7	46.5
60º	9.0	21.0	18.0	24.0	10.4	65.5
90º	9.0	19.0	24.0	24.0	9.0	

Illustration 50-112-1: References for Table 50-112-1



(b) *Residential districts; off-street parking provisions.*

(1) Parking regulations for the AG, SF-20-E, SF-9, SF-6, and D Districts and for Planned Developments for zero lot line, patio home, townhome and single-family attached dwelling units. For every single-family dwelling unit, a minimum of two off-street parking spaces shall be provided on the same lot as the main structure. For duplexes, two off-street parking spaces for each dwelling unit shall be required. For the purposes of this subsection, the first two parking spaces contained in covered garages and/or covered carports for each dwelling unit shall not be considered as off-street parking spaces. For example, if a dwelling has a three-car garage, one additional off-street parking space would be required in addition to that included within the garage. For the purposes of this subsection, the minimum dimensions of each parking space shall be in accordance with Table 50-112-1; provided, however, two spaces shall be not less than 12 feet by 40 feet if aligned linearly. All required driveways and parking areas shall have a topping, which is the same as the abutting street, or they may be concrete cement. All additional parking in a required yard must also be of the same material as the abutting street or concrete cement.

(2) Parking regulations for the MHP District.

a. *Tenant/owner parking.* Two spaces per unit located on the same lot as the unit served. Each parking space shall be in accordance with city standards, and shall be located to eliminate interference with access to parking areas provided for other manufactured/mobile homes and for public parking in the park.

b. *Visitor and supplemental parking.* In addition to parking spaces required for each manufactured/mobile home unit, there shall be parking provided for the manufactured/mobile home community in general in compliance with the following:

1. One visitor parking space for every three manufactured/mobile home spaces.

2. Boats, campers, trailers and other recreational vehicles shall be prohibited unless oversize parking areas are provided and are approved by the city. This parking area shall not be used to meet the minimum parking requirements and shall not be visible from a public street.

3. Each parking space will be not less than nine feet by 20 feet (nine feet by 20 feet), or as required in Table 50-112-1, which is not to be included in the lot size.

(3) All required vehicle parking shall be on a concrete or asphalt paved surface.

(4) All driveways and approaches to parking spaces shall be on a concrete or asphalt paved surface, except in the AG District.

(5) All existing driveways within the Old Town area as of the effective date of this chapter shall be deemed as conforming (unless they represent a threat to public health, safety and welfare, in which case the city may require removal and/or relocation and/or refurbishment).

(6) No required parking space, garage, carport, or other automobile storage space shall be used for the storage of any heavy load vehicle (see definitions section). No such vehicle shall be stored or parked for more than 72 hours within a 30-calendar-day period or on a regular, repetitive basis on any street, or within any front yard or street side yard. Such a vehicle shall be parked in a space that is located on a concrete or asphalt paved surface.

(7) Additional parking shall be required in accordance with this section for any recreational uses, clubhouse, office, sales offices and other similar accessory structures and uses.

(c) *Nonresidential and MF Districts; off-street parking provisions.*

(1) Parking regulations for the MF District.

a. Off-street parking. Each dwelling unit within a multifamily dwelling complex shall be provided with on-site off-street parking as follows:

1. Two parking spaces for each one bedroom unit;

2. Two and one-half parking spaces for each two bedroom unit; and

3. Three parking spaces for each three bedroom unit.

b. All parking areas shall be constructed of the same material as the adjoining street, or of concrete cement. No on-street parking shall be counted as meeting the requirements of this chapter and may be restricted or prohibited by the city. All parking areas shall be separated from walkways, sidewalks, streets, or alleys by a wall, fence, curbing, or other protection device in accordance herewith and in accordance with other applicable city specifications.

c. Covered parking and density bonuses.

1. An increase in density of a total of up to 24 units per acre is permitted when at least 50 percent of the required parking spaces are constructed as covered or enclosed spaces.

2. An increase in density of a total of up to 26 units per acre is permitted when 100 percent of the required parking spaces are constructed as covered or enclosed spaces.

d. No parking space may be located closer than six feet from any building or closer than two feet from any side or rear lot line.

(2) To prevent nuisance situations, all parking area lighting shall be designed, shielded and operated so as not to reflect or shine on adjacent properties and in accordance with city ordinances. All streets and driveways shall be lighted at night with a minimum intensity of two foot-candles' illumination if off-street parking or loading facilities are to be used at night.

(3) For safety and fire-fighting purposes, free access through to adjacent nonresidential parking areas shall be provided in accordance with section subsection (j) of this section.

(4) All off-street parking, driveways, maneuvering, and loading areas shall be designed in accordance with Table 50-112-1 and Illustration 50-112-1 and shall be paved with a concrete or asphalt surface and shall be curbed, in accordance with the city's parking lot paving requirements. All such areas shall be drained to prevent damage to abutting properties and/or public streets and alleys.

(5) For new construction only, all vehicle maneuvering shall take place onsite. No public right-of-way shall be used for backing or maneuvering into or from a parking space (except business locations in the downtown area that are already in existence as of the effective date of the ordinance from which this chapter is derived), or for circulation within the parking lot.

a. All entrances into parking lots shall be at least 20 feet in width, or a maximum of 40 feet in width.

b. Divided entrances into parking lots shall have a minimum ingress lane of 18 feet, a minimum landscaped median width of five feet for an unbroken distance of at least 100 feet, and a minimum egress lane of 22 feet. All divided entrances shall be a maximum of 45 feet in width.

(6) In all nonresidential and multifamily zoning districts, the perimeter of all parking lots and driveways shall be provided with concrete curbs. Parking shall not be permitted to encroach upon the public right-of-way.

(7) Refuse storage facilities placed in a parking lot shall not be located in a designated parking or loading space. Each refuse facility shall be located so as to facilitate pickup by refuse collection agencies and ease of egress from the site without having to back up further than 20 feet and without having to go the wrong way in a traffic aisle.

(8) Parking spaces for persons with disabilities and other associated provisions (e.g., clear and unobstructed pathways into building, crosswalks across parking lots, etc.) shall be provided according to building codes, state laws, and requirements of the Americans with Disabilities Act (ADA).

(9) Designated parking and loading areas shall not be used for the repair, storage, dismantling or servicing (except for normal maintenance of a private vehicle) of vehicles or equipment, or for the storage of materials or supplies, or for any other use in conflict with the designated parking and loading areas (i.e., advertising or outside storage of raw materials).

(10) To ensure that all requirements set forth in this section are carried forward, it will be the responsibility of the owner of the parking area to adequately maintain the facility. All off-street parking areas shall be kept free of trash, debris, vehicle repair operation or display and advertising uses. At no time after initial approval of the parking area layout can changes be made in the location and number of provided spaces without city approval of a revised plan, as described in section 50-36

(11) A stacking space shall be an area on a site measuring at least eight feet wide by 20 feet long that has direct forward access to a service window or station of a drive-through facility and that does not constitute space for any other circulation driveway, parking space, or maneuvering area. An escape lane of at least eight feet in width and with negotiable geometric design must be provided to allow vehicles to get out of the stacking lane if necessary. Off-street stacking requirements for drive-through facilities shall be as follows:

a. For financial institutions with drive-through facilities, each teller window or station, human or mechanical, shall be provided with a minimum of five stacking spaces. One escape lane shall be provided.

b. For each service window of a drive-through restaurant, a minimum of five spaces shall be provided for the first vehicle stop, and two spaces shall be provided for each additional vehicle stop (order/pick-up windows, etc.). One escape lane shall be provided from the beginning of the stacking lane to the first vehicle stop.

c. For a full-service car wash, each vacuum or gas pump lane shall be provided with a minimum of four stacking spaces. For the finish/drying area, adequate vehicle stacking and storage space must be provided to keep finished vehicles out of circulation aisles, access easements, fire lanes, streets, etc.

d. For each automated self-service (drive-through/rollover) car wash bay, a minimum of three stacking spaces, in addition to the wash bay itself, shall be provided. One stacking space shall be provided at the exit end of each wash bay for window-drying and other detailing.

e. For each wand-type self-service (open) car wash bay, a minimum of two stacking spaces, in addition to the wash bay itself, shall be provided. One stacking space shall be provided at the exit end of each wash bay for window-drying and other detailing, unless a separate area/shade structure is provided (outside of circulation aisles) for these activities.

f. For automobile quick-lube type facilities, a minimum of three stacking spaces shall be provided for each service bay in addition to the service bay itself.

g. For all other types of land use that provide drive-up service, a minimum of three stacking spaces for each service window shall be provided.

(12) Dead-end parking areas shall be avoided if possible. If dead-end parking is necessary, then it shall be designed such that it is no more than five parking spaces deep, unless adequate turnaround space is provided. A minimum five-foot deep hammerhead back-up space shall be provided at the end of any dead-end parking area.

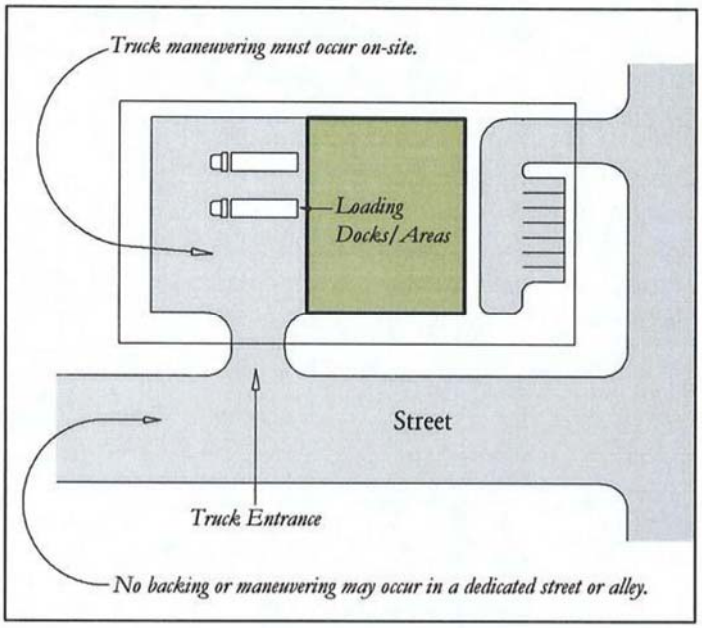
(13) All parking structures must conform to the construction and design standards of the zoning district in which they are located.

(14) A parking analysis and tabulation shall be required on the site plan for each development and shall be a part of the site plan submittal. Each analysis shall include an explanation of applicable parking requirements (as a minimum, include occupancy classification type, building square footages, and number of employees), total parking spaces required and required and provided for Americans with Disabilities Act (ADA) accessible spaces, and required and provided ADA van accessible spaces. When the director of public works, or designee determines necessary, an additional traffic impact study may be required to determine the impacts of a development on the off-site public street system.

(d) *Off-street loading space—All districts.*

(1) All retail and similar nonresidential structures shall provide and maintain off-street facilities for receiving and loading merchandise, supplies and materials within a building or on the lot or tract. All drives and approaches shall provide adequate space and clearances to allow for the maneuvering of trucks off-street. Each site shall provide a designated on-site maneuvering area for trucks (see Illustration 50-112-1). Such off-street loading space may be adjacent to (but not any portion of) a public alley or private service drive, or it may consist of a truck berth within the structure. The minimum dimensions of a "regular" loading space shall be ten feet by 30 feet, and a "large" loading space shall be at least ten feet by 65 feet. Loading spaces or berths shall be provided as deemed appropriate by the planning director (or designee).

Illustration 50-112-2: Truck maneuvering related to loading areas



(2) Loading docks for any establishment which customarily receives goods between the hours of 9:00 p.m. and 8:00 a.m. and is adjacent to a residential use or district shall be designed and constructed so as to minimize the effects of the noise of the operation on adjacent residences. Other screening/buffering alternatives may be approved on the applicable required plan (see section 50-116) provided that the city makes a finding that the method of screening/buffering will be adequate to protect nearby residences. Below grade loading docks are required to have operational sump pumps or other approved drainage.

(3) Kindergartens, elementary schools, day schools, and similar child training and care establishments shall provide one paved off-street pedestrian loading and unloading space for an automobile on a through, "circular" drive for each ten students cared for (excluding child care in a residence). An additional lane shall also be required to allow pass by or through traffic to move while automobiles waiting or parked to pick up children occupy loading/unloading areas.

(4) Loading spaces that are adjacent and easily accessible to several buildings or uses, including buildings and uses on separate lots, shall be allowed to satisfy the loading requirements for the individual buildings or uses.

(5) Loading spaces to be shared among separate lots shall be in reasonably close proximity to all potential users and an agreement granting mutual use by the owners of each building shall be executed and provided to the city manager (or his designee).

(e) *Parking access from a public street—All districts.*

(1) Consideration shall be given to providing entrance/exit drives that extend into the site to provide adequate queuing of vehicles on the site.

(2) Entrance/exit drives shall be appropriately designed and located to minimize traffic congestion or conflict within the site and with adjoining public streets. Based upon analysis by the city, if projected volumes of traffic entering or leaving a development are likely to interfere with the projected peak traffic flow volumes on adjoining streets, additional right-of-way and paving in the form of a deceleration lane, a turn lane, or other roadway improvements may be required of a developer in order to reduce such interference and to help ensure traffic safety and efficiency. The dedication of additional right-of-way or street paving may also be required, and shall be determined at the time the required plan (see section 50-36) and final plat are approved by the city.

(3) Vehicular access to nonresidential uses shall not be permitted from alleys serving residential areas, and shall not be configured as "head-in" parking spaces that are accessed directly from the street.

(4) Parking space configuration, arrangement, size and circulation in all districts shall be constructed according to Illustration 50-112-1 and Table 50-112-1.

(f) *Parking requirements based upon use.* In all districts, there shall be provided at the time any building or structure is erected or structurally altered, or change of use, off-street parking spaces in accordance with the use chart, section 50-82. Further descriptive requirements have been included herein where applicable, as referenced within the use chart:

(1) *Accessory uses.* All areas for accessory uses not listed above or in other parts of this section (such as restaurants, office, etc.), shall be calculated in with the minimum specified for those individual uses.

(2) *Auto dealer (new and/or used auto sales); motorcycle sales/dealer; personal watercraft sales (new/repair).* One parking space for each 500 square feet of sales floor/office and other indoor uses, plus one parking space for each 1,000 square feet of exterior lot area used for storage, sales and parking areas, plus one parking space per repair bay in service areas (indoors or outdoors).

(3) *Community center (public), museum, library, or art gallery.* Ten parking spaces plus one additional space for each 300 square feet of floor area in excess of 2,000 square feet. If an auditorium is included as a part of the building, its floor area shall be deducted from the total and additional parking provided on the basis of one space for each four seats that it contains (see section 50-82).

(4) *Convenience store (with or without gasoline sales) or gasoline station.* One space per 200 square feet of floor area, plus one parking space for each side of a gasoline pump unit (a unit may have up to six nozzles for gasoline disbursement). Spaces within pump areas qualify as spaces for the parking requirement. If no gasoline sales are provided, then the parking requirements shall be the same as for a retail store. Adequate space shall be provided for waiting, stacking, and maneuvering automobiles for refueling.

(5) *Funeral home or mortuary.* One parking space for each 200 square feet of floor space in slumber rooms, parlors or individual funeral service rooms, or one space for each three seats in the auditorium/sanctuary (see section 50-82), whichever is greater. Adequate on-site stacking spaces shall also be provided for the organization and forming of processions such that these activities do not cause excessive or extended traffic congestion/delays on a public roadway.

(6) *Golf driving range.* 1½ spaces for each driving tee.

(7) *Hotel/motel.* One space per guest room for the first 250 rooms and 0.75 space per room for each room over 250, plus one space per five restaurant/lounge area seats (based upon maximum occupancy), plus one space per 125 square feet of meeting/conference areas.

(8) *Mini-warehouse/self storage.* Four spaces per establishment, plus two spaces for an on-site manager's residence (if applicable), plus one appropriately sized space for any type of vehicle to be stored on-site (e.g., rental trucks, boats, RVs, etc.)

(9) *Motion picture theater (indoors).*

a. One space per 3½ seats for single-screen theaters;

b. One space per five seats for motion picture theaters with two or more screens.

(10) *Motor freight transportation, storage, and terminal/transit terminal/truck terminal/other similar transportation uses.* For warehouse and staging/loading areas, one space for each 1,000 square feet of floor area; for bus depot or other human transportation use, one space per 100 square feet of passenger waiting area, plus parking spaces for any warehouse and staging/loading areas on the premises (as above).

(11) *Places of public assembly not otherwise specified.* One space for each four seats provided.

(12) *Retail or personal service establishment not otherwise specified.* One space per 200 square feet of gross floor area in addition to any required stacking spaces for drive-through facilities in subsection (c)(11)d of this section.

(13) *Schools.*

a. Public or denominational—Elementary. Two spaces for every classroom and office;

b. Public or denominational—Junior high. Three spaces for every classroom and two spaces for each office;

c. Public or denominational-High school. Eight spaces for every classroom and two spaces for each office;

d. Other than public or denominational. Same as above, depending on grade.

(14) *Skilled nursing facility.* One space per six beds; plus one parking space for each 300 square feet of floor area devoted to offices, cafeterias, exercise/therapeutic rooms, and other similar ancillary uses.

(g) *Rules for computing number of parking spaces and miscellaneous off-street parking requirements.* In computing the number of parking spaces required for each of the above uses, the following rules shall govern:

(1) The term "floor area" means the gross floor area of the specific use.

(2) The term "seat" shall be interpreted as follows:

a. For fixed (e.g., church pews, grandstands, benches, etc.) seating, one seat equals 1.75 feet of length; and

b. For flexible (e.g., folding chairs, etc.) seating areas, one seat equals eight square feet of floor area occupied by such seating area (includes aisles).

(3) Where fractional spaces result, the parking spaces required shall be calculated by rounding to the nearest whole number.

(4) The parking space requirements for a new or unlisted use not specifically mentioned herein shall be the same as required for a use of similar nature. If the proposed use is not similar to any of the uses listed herein, a determination shall be made/approved by the city, in conjunction with the request for classification of the new or unlisted use, as provided in section 50-82(b).

(5) Whenever a building or use is changed or enlarged in floor area, number of dwelling units, seating capacity or otherwise, to create a need for an increase of ten percent or more in the number of existing parking spaces, such spaces shall be provided on the basis of the enlargement or change. If a building or use that was in existence prior to the effective date of the ordinance from which this chapter is derived is enlarged by more than 50 percent in floor area, number of employees, number of dwelling units, seating capacity or otherwise, then said building or use shall be required to conform with the parking requirements herein for the entire building or use.

(6) For buildings which have a combination of uses within the same structure or on the same premises (such as retail or office), the off-street parking requirement shall be calculated as the summation of the parking requirements for each use, and no parking space for one particular use shall be allowed to count toward the parking requirement for some other use on the premises except in the case of a shared parking arrangement (see subsection (h) of this section).

(7) Shared parking. Shared parking may be allowed in the case of mixed uses (different buildings) under the following conditions: Up to 50 percent of the parking spaces required for a theater or other place of evening entertainment (after 6:00 p.m.), or for a church, may be provided and used jointly by banks, offices, and similar uses not normally open, used, or operated during

evening hours. Shared parking must be on the same parking lot. Reduction due to shared parking shall only be allowed if approved by the city on the applicable required plan (see section 50-36). To ensure retention of the shared parking spaces, each property owner shall properly draw and execute an irrevocable mutual parking agreement document expressing the same, shall file this agreement in the county real property records, and shall provide a copy of the filed agreement to the city prior to issuance of a certificate of occupancy for any use that relies upon the parking agreement.

(h) *Location of parking spaces.* In any case where any additional parking spaces are required and are not located on the same lot with the building or use served, or where such spaces are collectively or jointly provided and used, approval by the planning and zoning commission is required subject to the following conditions:

(1) Except for location, all other requirements relating to off-street parking shall be met.

(2) Such space shall be conveniently usable without unreasonable:

a. Hazard to pedestrians;

b. Hazard to vehicular traffic;

c. Traffic congestion; or

d. Detriment to the appropriate use of other properties in the vicinity.

(3) A written agreement shall be drawn to the satisfaction of the city attorney and executed by all parties concerned, assuring the continued availability of the off-street parking facility for the development it is intended to serve.

(i) *Use of required parking spaces—Nonresidential districts.* Off-street parking and loading spaces shall be used only for these respective purposes and shall not be used for refuse containers, cart corrals, recycling kiosks, signs or sign support structures, telecommunications towers or support structures, storage or permanent display of boats, trailers, campers, motor vehicles or other goods, materials, or products for sale/lease/rent.

(j) *Fire lanes.* Fire lanes shall be provided in all multifamily (and in some single-family attached) developments, manufactured (mobile) home parks, and nonresidential developments, as required by the adopted fire code of the city (also see chapter 40, pertaining to subdivisions, for certain fire lane regulations).

(k) *Special regulations for recreational vehicles or equipment.* No recreational vehicle shall be left unattended or parked for more than 24 hours within any parking lot, parking spaces, drive aisle, vacant or unused property, or pervious/unpaved surface area (except an appropriately zoned and approved/paved parking lot for such vehicles). An owner or tenant of a residential lot may park a recreational vehicle that they own on the same lot in accordance with city regulations. Such vehicle parking must also meet all other required city ordinances.

(Ord. No. 2008-01, § 39, 2-4-2008)

Sec. 50-113. Landscape requirements.

(a) *Purpose.* Landscaping is accepted as adding value to property and is in the interest of the general welfare of the city. The provision of landscaped areas also serves to increase the amount of a property that is devoted to pervious surface area that, in turn, helps to reduce the amount of impervious surface area, stormwater runoff, and consequent non-point pollution in local waterways. Therefore, landscaping is hereafter required of new development, except single- and two-family and agricultural uses.

(b) *Scope and enforcement.*

(1) The standards and criteria contained within this section are deemed to be minimum standards and shall apply to all new nonresidential and multifamily construction, and shall apply in the

case of an addition to a nonresidential or multifamily structure or site that alters such structure or site by greater than 25 percent.

(2) Any use requiring a conditional use permit (CUP) or a PD Planned Development zoning designation must comply with these landscape standards unless special landscaping standards are otherwise provided for in the ordinance establishing the CUP or PD District. In no case shall the standards provided for in the CUP or PD ordinance be less than the standards required by this section.

(3) The provisions of this section shall be administered and enforced by the city manager or his designee.

(4) The landscape standards in this section apply only to nonresidential and multifamily developments (including uses such as schools and churches within a residential zoning district).

(5) If at any time after the issuance of a certificate of occupancy, the approved landscaping is found to be not in conformance with the standards and criteria of this section, the building official (or his designee) shall issue notice to the owner, citing the violation and describing what action is required to comply with this section. The owner, tenant or agent shall have 30 calendar days from date of said notice to establish/restore the landscaping, as required. If the landscaping is not established/restored within the allotted time, then such person shall be in violation of this chapter.

(c) *Permits.*

(1) No permits shall be issued for building, paving, or construction until a detailed landscape plan is submitted and approved by the city manager or his designee, along with other required plans. A landscape plan shall be required as part of other required submissions and may be shown on the concept plan, building permit plan, or site plan, as required by section 50-36, or may be drawn on a separate sheet. Except as provided in subsection (c)(2) of this section, prior to the issuance of a certificate of occupancy for any building or structure, all screening and landscaping shall be in place in accordance with the landscape plan.

(2) In any case in which a certificate of occupancy is sought at a season of the year in which the city manager, or his designee, determines that it would be impractical to plant trees, shrubs or groundcover, or to successfully establish turf areas, a temporary certificate of occupancy may be issued, provided a letter of agreement and financial assurance by a check or performance bond equivalent to the work yet to be performed from the property owner is submitted that states when the installation shall occur. Such financial guarantee shall be returned when the work is completed.

(d) *Landscape plan.*

(1) The city manager or his designee shall review the plans for completeness in writing within ten business days after filing. If the plans are incomplete, notice shall be sent within the ten business days to the applicant specifying the document or other information to complete the application and the date the plan submission will expire and be considered denied if the applicant fails to provide such information. If the required application and plans are not corrected or completed within 45 calendar days after submission, then the required plan will be deemed to have expired and it will be returned to the applicant together with any accompanying applications. If the plans are deemed complete, or if ten business days passes without notice, the city manager, or his designee, shall review such plans and shall approve same if the plans are in accordance with the criteria of these regulations. If the plans are not in conformance, they shall be disapproved and shall be accompanied by a written statement setting forth the changes necessary for compliance.

(2) Landscaping plans shall be drawn in a legible engineering scale and shall contain the following minimum information:

a. The scale shown in both written and graphic form.

b. Location, size and species of all trees to be preserved (do not use tree stamps unless they indicate true size and location of trees).

c. Where credited trees are proposed, a plan indicating how these existing trees will be protected from damage during construction.

d. Location of all plant and landscaping material to be used, including plants, paving, benches, screens, fountains, statues, earthen berms, ponds (to include depth of water), topography of site, or other landscape features.

e. Species and common names of all plant materials to be used.

f. Size of all plant material to be used (container size, planted height, etc.).

g. Spacing of plant material where appropriate.

h. North arrow/symbol and a small map showing where the property is located.

i. Date of the landscape plan.

(3) No major change to an approved landscape plan shall be made prior to the submission and approval of a revised landscape plan meeting the criteria found within this section.

(4) Upon a recommendation by the city manager or his designee, an alternative plan that is not in compliance with these landscape provisions may be approved. The alternative plan must clearly be superior to a plan or layout that would otherwise be in compliance. In making the determination, the city manager or his designee may consider:

a. The topography, shape, size, and/or other natural features of the property;

b. The ability of the alternative plan to enhance a natural feature that is particular to the site; and/or

c. The opportunity to create a unique atmosphere, attraction, or other similar factors.

(e) *General standards.* The following criteria and standards shall apply to landscape materials and installation:

(1) All required landscaped open areas shall be completely covered with living plant material. Landscaping materials such as wood chips and gravel may be used under trees, shrubs and other plants.

(2) Plant materials shall conform to the standards of the approved plant list for the city. Grass seed, sod and other material shall be clean and reasonably free of weeds and noxious pests and insects.

(3) Alternate landscaping design. The planning and zoning commission may consider and approve an alternative plan, which is not in compliance with the requirements of this chapter. Such alternative plan must meet the objectives and purposes of this chapter, as determined by the planning and zoning commission, may not reduce the standards set forth herein, and clearly be superior to a plan that would otherwise be in compliance. In making this determination, the planning commission may consider the topography, shape, size, or other natural features of the building site; the suitability of any alternative screening or buffering proposal; and other similar factors.

(4) Replacement of dead landscaping plants. If any required landscaping tree, shrub, or groundcover plant should die, the owner shall replace these plants by the end of the next planting season.

(5) Replacement of existing landscape development. Any major or significant modification to a landscape development constructed or installed in association with this section must be in accordance with this section and must be approved by the city's building official.

(6) Required crown size, caliper, and height of trees.

a. Trees shall have an average spread of crown of greater than 15 feet at maturity. Trees having a lesser average mature crown of 15 feet may be substituted by grouping the same so as to create the equivalent of 15 feet of crown spread.

b. Grouping collectively equals a crown spread of 15 feet.

c. Large trees shall be a minimum of four inches in caliper measured 12 inches above the ground, and shall be a minimum of seven feet in height at time of planting.

d. Small trees shall be a minimum of two inches in caliper, measured six inches above the ground, and shall be a minimum of five feet in height at time of planting.

(7) Shrubs not of a dwarf variety shall be a minimum of two feet in height when measured immediately after planting. Hedges, where installed for general screening purposes, shall be planted and maintained so as to form a continuous, unbroken, solid visual screen that will be six feet in height within three years after the time of initial planting. Hedges, where installed for screening parking areas, shall be planted and maintained so as to form a continuous, solid visual screen that will be three feet in height within two years after the time of initial planting.

(8) Grass areas shall be sodded, plugged, sprigged, hydro-mulched and/or seeded, except that solid sod shall be used in swales, earthen berms or other areas subject to erosion.

(9) Ground covers used in lieu of grass in whole and in part shall be planted in such a manner as to present a finished appearance and reasonably completed coverage within one year of planting.

(10) Earthen berms shall have side slopes not to exceed 33.3 percent (three feet of horizontal distance for each one foot of vertical height). All berms shall contain necessary drainage provisions as may be required by the city's engineer.

(f) *Minimum landscaping requirements for nonresidential and multifamily developments.*

(1) *General requirements.* The following requirements shall apply:

a. For all nonresidential and multifamily developments (including schools, churches, day care facilities, and other similar uses in a residential district), at least 15 percent of the front yard shall be permanently landscaped area (see Illustration 50-113-1. In addition, with the exception of industrial tracts, the following shall apply:

1. Sites of up to 20,000 square feet shall have five percent of the area not covered by building or structure permanently landscaped.

2. Sites of 20,000 to 200,000 square feet shall have 7.5 percent of the area not covered by building or structure permanently landscaped.

3. Sites of over 200,000 square feet shall have ten percent of the area not covered by building or structure permanently landscaped.

b. Landscape development located within the rear setback area of a building site, screened from adjacent properties and not adjacent to a public street shall not be considered when determining the minimum requirements of this section.

c. Only shrubs and groundcovers (i.e., no trees) shall be used under existing or proposed overhead utility lines.

d. Necessary driveways from the public right-of-way shall be permitted through required landscaping in accordance with city regulations.

(2) *Requirements along major thoroughfares.* For the purpose of these requirements, a major thoroughfare is defined as a thoroughfare having a right-of-way of at least 60 feet. The following requirements shall be credited toward the 15 percent landscaped front yard requirement, as specified in subsection (f)(1)a of this section.

a. A minimum ten foot landscape buffer adjacent to the right-of-way of any major thoroughfare is required, except as specified below.

b. Any nonresidential or multifamily parcel that fronts onto Main Street shall provide a minimum 15 foot landscape buffer.

c. Corner lots fronting two major thoroughfares shall provide the appropriate required landscape buffer on both street frontages (i.e., ten feet on major thoroughfares, and 15 feet on Main Street.

d. All other street frontages shall observe a minimum five foot landscape buffer.

e. One large tree shall be required per 40 linear feet (or portion thereof) of street frontage. Trees should be grouped or clustered to facilitate site design and to provide an aesthetically pleasing, natural looking planting arrangement; this shall be credited toward the total number of trees required, as specified in subsection (f)(4)d of this section.

(3) *Requirements for landscaping in and around parking lots.* The following requirements shall be credited toward the 15 percent landscaped front yard requirement, and total landscaping requirement as specified in subsection (f)(1)a of this section.

a. Landscape areas shall be a minimum of 50 square feet in area. Landscape areas shall be a minimum of five feet wide.

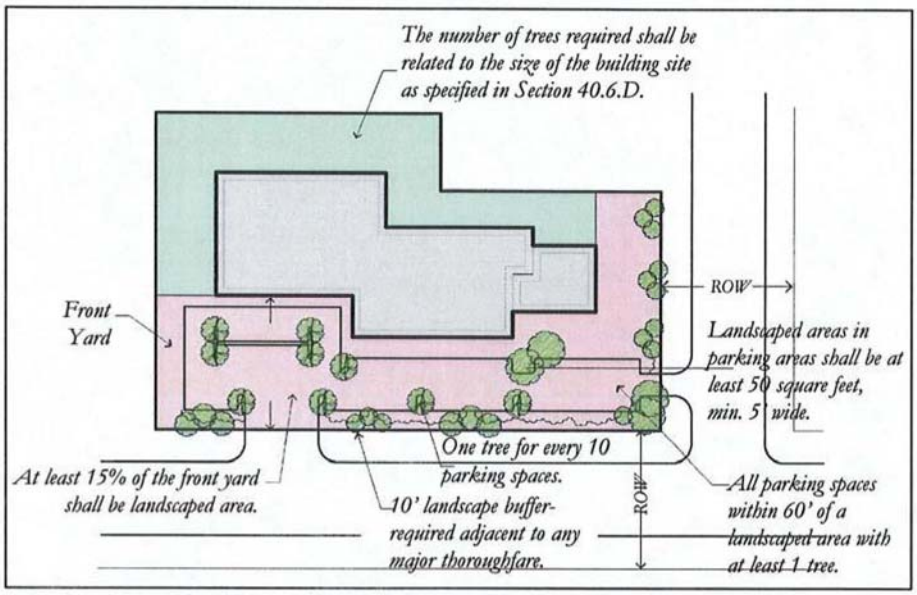
b. There shall be a landscaped area with at least one tree within 60 feet of every parking space.

c. There shall be a minimum of one tree planted in the parking area for every ten parking spaces for parking lots having more than 20 spaces.

d. There shall be a landscaped area that is a minimum of 12 feet wide to separate parking areas that have 200 or more parking spaces.

e. Landscape areas should be located to define parking areas and to assist in clarifying appropriate circulation patterns. All landscape areas shall be protected by a monolithic concrete curb or wheel stops, and shall remain free of trash, litter, and car bumper overhangs.

Illustration 50-113-1: Selected landscaping requirements illustrated



(4) *Requirements for trees.* The following requirements shall apply:

a. All existing trees that are to be preserved shall be provided with undisturbed, permeable surface area under (and extending outward to) the existing dripline of the tree.

b. All new trees shall be provided with a permeable surface under the dripline a minimum of five feet by five feet.

c. A minimum of 50 percent of the total trees required for the property shall be large shade trees as specified on the approved plant list in this section.

d. Minimum number of trees required. The number of trees specified as required herein shall be in addition to those required for major thoroughfares as outlined in this section. The minimum number of trees shall be provided and maintained on the building site, as outlined below, based on the area of the site not covered by a building or structure:

1. Less than 3,000 square feet: two.
2. 3,001 to 7,000 square feet: three.
3. 7,001 to 10,000 square feet: four.
4. 10,001 to 20,000 square feet: five.
5. 20,001 to 30,000 square feet: six.
6. 30,001 to 40,000 square feet: seven.
7. 40,001 or greater, per 20,000: three.

Square feet (rounded up to the whole tree)

(h) *Tree preservation.* The following provisions shall apply:

(1) During any construction or land development, the developer shall clearly mark all trees to be preserved/retained on-site, and may be required to erect and maintain protective barriers around all such trees or groups of trees. The developer shall not allow the movement of equipment or the storage of equipment, materials, debris or fill to be placed within the dripline of any trees that are designated for preservation.

(2) During the construction stage of development, the developer shall not allow cleaning of equipment or material under the canopy of any tree or group of trees that are being preserved. Neither shall the developer allow the disposal of any waste/toxic material such as, but not limited to, paint, oil, solvents, asphalt, concrete, mortar, etc., under the canopy of any tree or groups of trees to remain.

(3) No attachment or wires of any kind, other than those of a protective or supportive nature, shall be attached to any tree.

(4) Tree credits.

a. Landscape plans that preserve existing trees that are found on the approved list shall be given credit toward the total number of trees required as outlined in the following:

Diameter of Existing Tree (inches)	Credit Against Tree Requirement
One inch—three inches	1.0 trees
Over three inches—9 inches	Two trees

Over 9 inches—15 inches	Three trees
Over 15 inches	Six trees

b. If a credited tree dies for any reason, it must be replaced with the credit number of trees within 120 days.

c. The following activities shall be prohibited within the limits of the drip line of any existing tree to be retained under the provisions of a landscape plan required by this chapter:

1. Material storage. No materials intended for use in construction or waste materials accumulated due to excavation or demolition;

2. Equipment cleaning/liquid disposal. No equipment shall be cleaned or other liquids deposited, including paint, oil, solvents, asphalt, concrete, mortar, or other materials;

3. Tree attachments. No signs, wires, or other attachments, other than those of a protective nature, which have been approved in the tree disposition plan; and

4. Vehicular traffic. No vehicle, construction equipment or parking is allowed.

d. On development sites requiring 100 parking spaces or more, the number of parking spaces may be reduced by one percent for every ten percent increase in tree credits provided above the minimum. However, the parking requirement shall not be reduced by more than five percent.

(i) *Sight distance and visibility.* The following provisions shall apply:

(1) Rigid compliance with these landscaping requirements shall not be such as to cause visibility obstructions and/or blind corners at intersections.

(2) Whenever an intersection of two or more public rights-of-way occurs, a triangular visibility area in accordance with chapter 38, article II shall be created. Landscaping, screening and fencing within the triangular visibility area shall be in accordance with such requirements and provide unobstructed cross-visibility at a level between 36 inches and 15 feet. Trees may be permitted in this area provided they are trimmed in such a manner that no limbs or foliage extend into the cross-visibility area. In addition to the 45 foot visibility triangle at the intersection of two streets as required in chapter 38, article II, the following visibility triangular areas meeting the same requirements are required:

a. The areas of property on both sides of the intersection of an alley accessway and public right-of-way shall have a triangular visibility area with two sides of each triangle being a minimum of ten feet in length from the point of intersection and the third side being a line connecting the ends of the other two sides.

b. The areas of property located at a corner formed by the intersection of a private driveway onto a public road shall have a triangular visibility area with two sides of each triangle being a minimum of 20 feet in length along the right-of-way lines (or along the driveway curbline and the road right-of-way line) from the point of the intersection and the third side being a line connecting the ends of the other two sides. (See Illustration 50-116-5 of this chapter).

(3) Landscaping, except required grass and low ground cover, shall not be located closer than three feet from the edge of any accessway pavement on arterial or collector streets as shown on the adopted comprehensive plan.

(4) In the event other visibility obstructions are apparent in the proposed landscape plan, as determined by the city manager or his designee, the requirements set forth herein may be reduced to the extent to remove the conflict.

(j) *Approved plant list.* The city council shall, by resolution, establish a list of trees, shrubs, and plants that are suitable for and may be used to satisfy the landscape requirements of this section.

(k) *Maintenance.* The following provisions shall apply to maintenance:

(1) The owner, tenant and/or their agent, if any, shall be jointly and severally responsible for the maintenance of all landscaping. All required landscaping shall be maintained in a neat and orderly manner at all times. This shall include, but not to be limited to, mowing (of grass six inches or higher), edging, pruning, fertilizing, watering, weeding, and other such activities common to the maintenance of landscaping. Landscaped areas shall be kept free of trash, litter, weeds, and other such material or plants not a part of the landscaping. All plant material shall be maintained in a healthy and growing condition as is appropriate for the season of the year.

(2) Required plant materials which die shall be replaced with plant material of similar variety and size, within 90 calendar days. Trees with a trunk diameter in excess of six inches measured 24 inches above the ground may be replaced with ones of similar variety having a trunk diameter of no less than three inches measured 24 inches above the ground on a caliper-inch for caliper-inch basis (e.g., for a six-inch tree, two three-inch replacement trees shall be required).

(3) A time extension for replacement of plant materials may be granted by the city manager or his designee, if substantial evidence is presented to indicate abnormal circumstances beyond the control of the owner or his agent.

(4) Failure to maintain any landscape area in compliance with this section is considered a violation of this section and may be subject to penalties of section 50-5

(Ord. No. 2008-01, § 40, 2-4-2008)

Sec. 50-114. Accessory buildings and related use regulations.

(a) *Description and regulations.* Regulations according to zoning district:

(1) *Residential districts.* In a single-family or multifamily district, an accessory building is a subordinate or incidental building, attached to or detached from the main building, not used for commercial purposes and not rented. Accessory buildings shall be located toward the rear portion of the property, and shall conform to applicable provisions of the building code.

a. Accessory dwellings (including garage/accessory dwellings and detached units) may be permitted as a matter of right or with a conditional use permit, if approved, as specified within a particular residential zoning district (see regulations for the specific district, and the use charts, section 50-82), and shall conform to the height limitations of the zoning district.

b. No accessory dwelling or quarters shall be used or occupied as a place of abode or residence by anyone other than a caretaker who is actually and regularly employed by the landowner or occupant of the main building, or is a guest or family member of the owner/occupant. Only one accessory dwelling unit (i.e., garage/accessory dwelling, servants/caretakers quarters, etc.) shall be allowed on any lot within a residential zoning district, and they shall be clearly incidental to the primary use. These accessory living structures shall not, in any case, be leased or sold.

(2) *Nonresidential districts.* In nonresidential districts, an accessory building is a subordinate building, the use of which is secondary to and supportive of the main building. Accessory buildings should, wherever possible, be located toward the rear portion of the property. Accessory buildings shall conform to applicable provisions of the building code.

(b) *Area regulations for accessory buildings in residential districts.* Size of yards:

(1) *Front yard.* Accessory buildings shall be prohibited in front of the main building.

(2) *Side yard.* Accessory buildings shall conform to the same minimum side yard requirements as the main building, except that:

a. Garages or carports located and arranged so that entry is from an interior side yard shall have a minimum setback of 25 feet from the side lot line. Carports or garages arranged so that entry is from the side yard, facing a public street, shall have a minimum setback from the side lot line that is equal to the required side yard for the main building or 20 feet, whichever is greater.

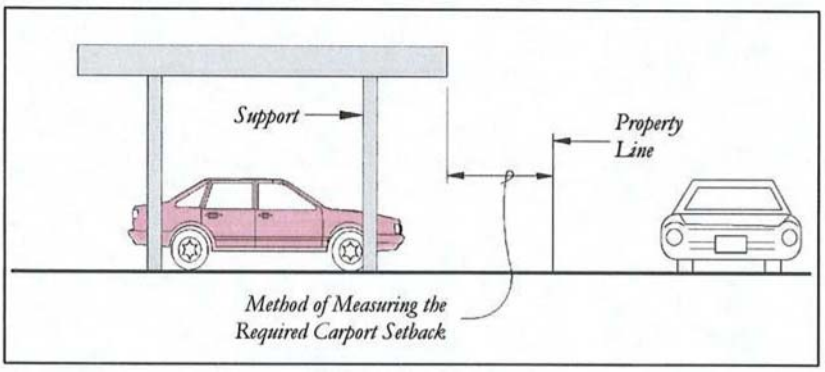
b. Swimming pools may encroach to within three feet of the lot line, provided it does not encroach upon any easement.

(3) *Rear yard.* With the exception of the AG and SF-20-E districts, accessory buildings shall have a minimum rear yard of three feet from any lot line or alley or utility easement line.

a. Carports, garages, or other accessory buildings, located within the rear portion of a lot as heretofore described, constructed closer than ten feet to the main building, shall have a rear yard equivalent to the rear yard requirement for the main building;

b. Garages and/or carports that are arranged so as to be entered from an alley or rear alley easement shall be set back from the rear property line or alley easement line a minimum distance of 25 feet.

Illustration 50-114-1: Carport setback measurement



c. Carports shall be measured from the part of the carport (usually the roof) that is closest to the street or alley (see Illustration 50-114-1). In single-family and two-family zoning districts, carports shall be a maximum of 500 square feet.

(Ord. No. 2008-01, § 41, 2-4-2008)

Sec. 50-115. Screening, buffering and fencing requirements.

(a) *Purpose of screening and buffering.* The purpose of screening and buffering is to encourage the most appropriate use of land and conserve and protect the privacy and value of adjacent permitted uses. Regulations are prescribed for the location and type of various screening devices to be used when required in the various zoning districts or in this section in accordance with the following standards.

(b) *Screening of nonresidential, multifamily areas and manufactured (mobile) home parks.* The following provisions shall apply to screening of nonresidential, multifamily areas and manufactured (mobile) home parks:

(1) An opaque screening wall of not less than six feet, nor more than eight feet, in height shall be erected on the property line separating zoning districts in the following cases:

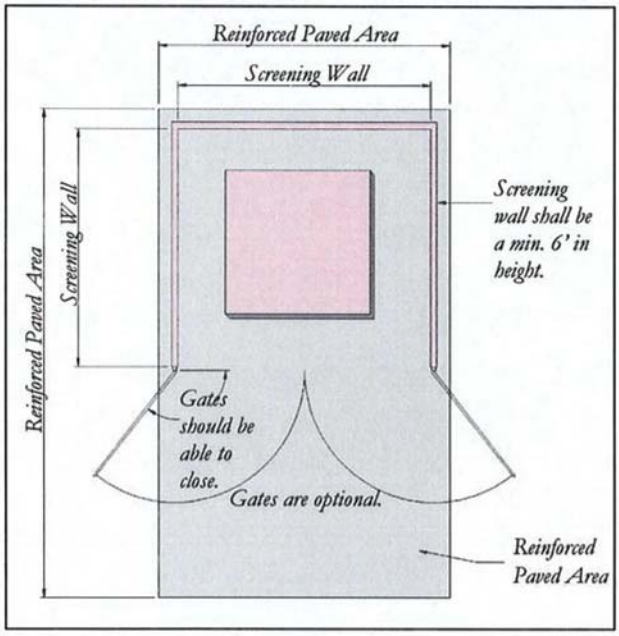
a. When a multifamily use, nonresidential use, or manufactured (mobile) home park sides or backs upon a single-family, two-family or residential PD District;

b. When any nonresidential use is on a tract, lot or parcel that is less than 15 acres and the nonresidential use sides or backs upon a multiple-family district; and

c. When a commercial or industrial use is established on a building site located adjacent to any residential area, a ten-foot side landscaped open-space buffer shall be installed and maintained by the owner, developer, or operator of the commercial or industrial property between it and the adjacent residential area. The provisions of this section shall not apply where the residential area is separated by a public street, drainage ditch, or canal with a minimum easement of 30 feet. With written approval of the planning and zoning commission, and otherwise full compliance with landscaping standards, a required buffer may include a stormwater detention area. In no event, however, shall the following uses be allowed in buffers: playfields, stables, swimming pools, tennis courts, or similar active recreation uses.

(2) Refuse areas which are not within a rear service area and which are visible from a public right-of-way for all nonresidential, multifamily and manufactured/mobile home park uses shall be visually screened by a minimum six-foot solid wall or fence on at least three sides (see Illustration 50-115-1 for refuse container enclosure diagrams). The fourth side, which is to be used for garbage pickup service, may provide an optional gate to secure the refuse storage area. Alternate equivalent screening methods may be approved by the city. Each refuse facility shall be located so as to facilitate pickup by refuse collection agencies. Adequate reinforced paved areas shall be provided for refuse facilities and their approaches for loading and unloading, as per Illustration 50-115-1.

Illustration 50-115-1: Refuse area screening



(3) The purpose of the screening wall is to provide a visual and protective barrier between the properties, and therefore the following shall apply:

a. The owner of the multifamily development, nonresidential development, or manufactured (mobile) home property shall be responsible for and shall build and maintain the required wall on the property line dividing the property from the single-family or duplex residential district, unless a buffer is provided and then it shall be on the inside edge of the buffer parallel to the property line.

b. Any screening wall required under the provisions of this section or under a conditional use permit, PD Planned Development District, or other requirement shall be constructed of treated wood, masonry, reinforced concrete, or other similar suitable permanent materials which do not contain openings. All wall openings shall be equipped with gates equal in height and screening characteristics to the wall.

c. Alternative equivalent screening may be approved at the time the required plan is approved (see section 50-36).

(4) See chapter 38, article II and this section for sight visibility requirements.

(5) Junkyards. Any junkyard, whether a primary use or an accessory use, shall provide an opaque screening device in conformance with the materials and methods described in section 50-116. Said screening device shall be of uniform height in relation to the ground that screens the view from adjoining lots and/or public places from junk. Stacking of junk above the height of the screening device that allows visibility from an adjoining lot or public place shall be prohibited.

(c) *Purpose of fencing requirements.* To encourage safety in residential neighborhoods, regulations are prescribed for the location and type of fencing devices to be used in conjunction with specific site elements.

(d) *Fences in residential areas.* The following provisions shall apply to fences in residential areas:

(1) No fence or gate in a residential district, except as specified in subsection (d)(5) of this section, shall exceed eight feet in height. Fences and gates shall be maintained in good repair at all times, including, but not limited to, ensuring that there be no missing, broken, or leaning slats or panels, and that the condition not to endanger life or property. Such maintenance shall be the responsibility of the owner of the property on which the fence or gate is located.

(2) a. Residential fences and gates shall be constructed of materials and colors in character with the area, and may contain a mix of building materials. Residential fences and gates shall consist of durable wood, vinyl, metal, stone, or other materials commonly used in conventional fence construction. Chainlink fencing may be utilized within the area of a rear yard, as defined in section 50-2. Non-opaque hog fencing in a framed construction or installation, no more than six feet in height, may be permitted within the Single-Family Estate Residential-20 District and Agricultural District subject to approval by the city manager or his/her designee.

b. Except as noted above, fences or gates composed of chain link or similar material (barbed/chicken wire, hog fencing), as well as electrified fences, or any fence upon which spikes, nails, razor wire or other sharp or pointed instruments or security materials are fixed, attached or placed shall be prohibited. Ornamental features on the top of any fencing may be permitted as part of the original construction.

(3) Fencing between the front property line and the closest primary or accessory structure on the site shall be as follows:

a. For lots which are less than five acres, the maximum height of a fence shall be four feet.

b. For lots that are five acres or larger, the maximum height of a fence shall be six feet.

c. Non-opaque wrought iron fencing or similar metal building material fencing may be permitted within the Single-Family Estate Residential-20 District and the Agricultural District with a maximum height of six feet. Said fencing shall be subject to approval by the city manager or his/her designee.

(4) Gates designed for vehicular access shall be set back from the edge of street or road pavement a minimum of 25 feet. Locking mechanisms for vehicular gates shall be subject to approval by the city fire marshal or his/her designee.

(5) Special purpose fencing, and their associated gates, that does not exceed ten feet in height shall be limited to only the perimeter of tennis/ball courts, play areas/fields, or gardens. This type of fencing may be constructed of chain link or fabric-type material in addition to durable wood, vinyl, metal, stone, or other materials commonly used in conventional fence construction. In no case shall barbed/chicken wire, hog fencing, etc., or electrified fences, or any fence upon which spikes, nails, razor wire or other sharp or pointed instruments or security materials are fixed, attached or placed be utilized. Said fences shall not be erected within any setback, easement, or site visibility area detailed in subsection (d)(6) of this section. Such fencing shall be subject to approval by the city manager or his/her designee.

(6) All fencing shall comply with sections 38-31 through 38-34 and section 50-113(i) for sight visibility requirements.

(e) *Fences in nonresidential areas, multiple-family areas, and manufactured (mobile) home parks.* Any fence required under the provisions of this chapter or under a conditional use permit, PD Planned Development District, or other requirement shall be constructed of treated wood, masonry, reinforced concrete, or other similar suitable permanent materials which do not contain openings. The fence or wall may be a diagonal, horizontal, or vertical stockade-type privacy fence, although the framing of such fence may be of metal. All fence openings shall be equipped with gates equal in height and characteristics (e.g., materials, aesthetics, etc.) to the fence.

(Ord. No. 2008-01, § 42, 2-4-2008; Ord. No. 2012-51, § 2, 2-14-2013)

Sec. 50-116. Supplemental regulations.

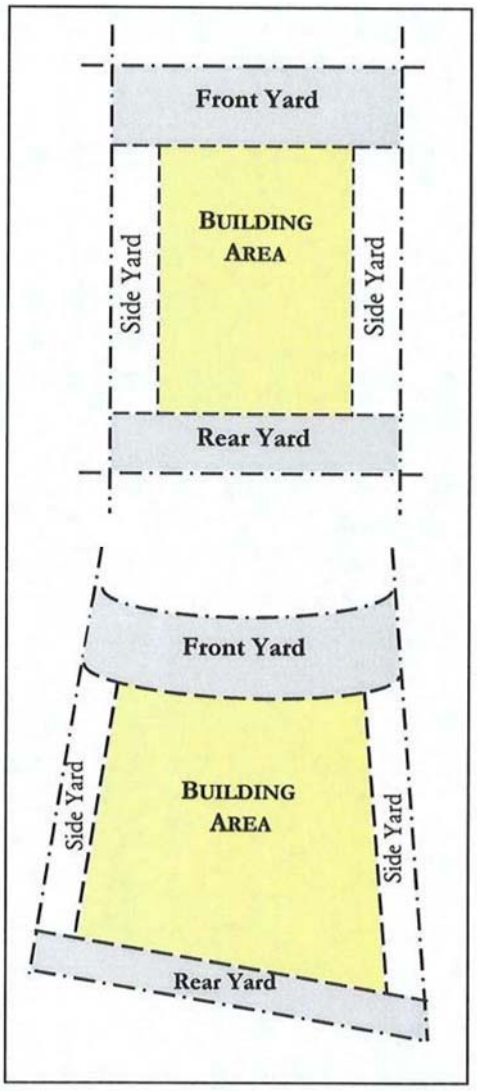
(a) *Setbacks and lot configurations.* The following requirements shall apply to setbacks and lot configurations:

(1) *Measuring yards.* All yard measurements shall be made in accordance with Illustration 50-116-1.

(2) *Configuration of lots.* Wherever possible, flag lots (i.e., lots with minimal, or panhandle type, frontage) shall be avoided. Similarly, through (i.e., double frontage) lots (particularly within residential zoning districts) shall also be avoided wherever possible. (Also see chapter 40, pertaining to subdivisions, for regulations pertaining to the configuration of lots.)

(3) *Building setbacks.* All setbacks established on a recorded plat shall be enforced, even if they exceed the required setbacks in this chapter. Setbacks established on a recorded plat shall only be changed through replat proceedings (see chapter 40, pertaining to subdivisions).

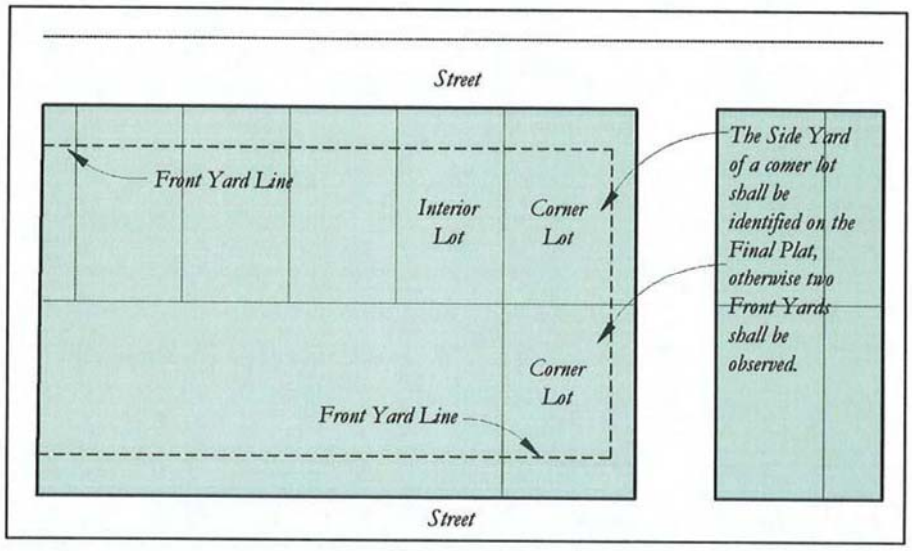
Illustration 50-116-1: Measuring yards



(b) *Front yard.*

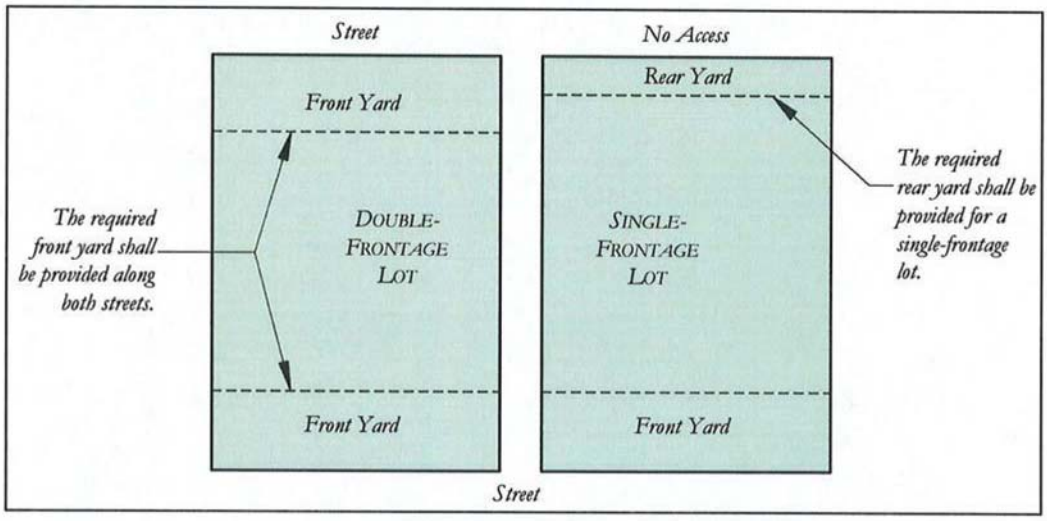
(1) *Corner and key lots.* On all key lots, the front yard setback shall be observed along the frontage of both intersecting streets. On all other lots, a front and side yard shall be provided as required by the zoning district in which the property lies. Where single-family and duplex (two family) lots have double frontage, extending from one street to another, or are on a corner, a required front yard shall be provided on both streets unless a side or rear yard building line has been established along one frontage on the plat, in which event only one required front yard need be observed. The side and/or rear yards in the case of single-family and duplex uses shall be identified and the front of the structure shall not face the side or rear yard. See Illustration 50-116-2.

Illustration 50-116-2: Corner lots



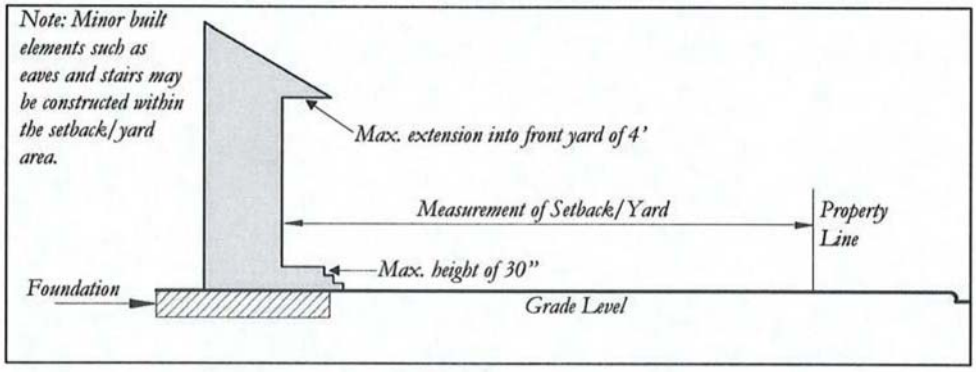
(2) *Double frontage.* Where lots have double frontage, running through from one street to another, the required front yard shall be provided on both streets. See Illustration 50-116-3.

Illustration 50-116-3: Double-frontage lots



(3) *Front yard measurement.* The front yard shall be measured from the property line to the front face of the building, to the nearest supporting member of a covered porch or terrace or to any attached accessory building. Eaves and roof extensions or a porch without posts or columns may project into the required front yard for a distance not to exceed four feet, and subsurface structures, platforms or slabs may not project into the front yard to a height greater than 30 inches above the average grade of the yard. See Illustration 50-116-4. Open porches extending into the front yard shall not be enclosed.

Illustration 50-116-4: Measuring front yard



(4) *Lots on curved streets.* Minimum lot widths for lots with predominate frontage on the curved radius of a street (e.g., cul-de-sac or "eyebrow" portion of a street) shall be measured as the linear distance of the curved front building line, and shall be shown on the subdivision plat. Lot widths for all lots shall be as set forth in the respective zoning district for each lot.

(5) *Gasoline service station pump islands.* Gasoline service station pump islands and related canopy posts that parallel a public street shall be located a minimum of 25 feet to the property line adjacent to a public street. For pump islands that are perpendicular or diagonal to a public street, the setback shall be 30 feet in order to prevent vehicles stacking out into the street while waiting for a pump position. The actual canopy itself may encroach up to four feet into the required setback, provided no posts or vertical structures encroach.

(6) *Rights-of-way.* Where a right-of-way line has been established for future widening or opening of a street or thoroughfare, upon which a lot abuts, then the front, side, or rear yard shall be measured from the right-of-way line.

(c) *Side and rear yards.*

(1) *Projections.* Every part of a required side and rear yard shall be open and unobstructed except for the ordinary projections of window sills, belt courses, cornices, and other architectural features not to exceed 12 inches into the required side or rear yard, and roof eaves projecting not to exceed 24 inches into the required side or rear yard. Air conditioning compressors and similar equipment are permitted in the side or rear yard. Open porches extending into a side or rear yard shall not be enclosed.

(2) *Future rights-of-way.* Where a future right-of-way line has been established for future widening or opening of a street or thoroughfare, upon which a lot abuts, then the front, side, or rear yard shall be measured from the future right-of-way line.

(d) *Special requirements.*

(1) *Residential districts.* For all residential districts, OT and MU Districts, and PD Districts allowing mixed uses, the following shall apply:

a. *Use of RVs, travel trailers, and motor homes.* Recreational vehicles, travel trailers or motor homes may not be used for on-site dwelling purposes.

b. *Perimeter fencing.* Electrical fencing and barbed wire is prohibited as perimeter fencing except for containment of farm animals on parcels of one or more acres.

c. *Setbacks for garages.* Single-family homes with side-entry garages where lot frontage is only to one street (not a corner lot) shall have a minimum of 20 feet from the door face of the garage or carport to the side property line for maneuvering. The minimum setback from any garage door to a street or alley right-of-way line shall also be 20 feet.

d. *Swimming pools.* Swimming pools shall conform to city adopted ordinances.

e. *Nonresidential uses and structures in residential districts.* A site plan (see section 50-36) shall be required for any nonresidential use (e.g., school, church, child care center, private

recreation facility, etc.) within a residential zoning district. Any nonresidential use which may be permitted in a residential zoning district shall conform to the O Office District standards, unless otherwise stated in this chapter or in an ordinance establishing a PD District.

f. *Elements permitted to extend above height limitations.* For all residential zoning districts except the AG District, cooling towers may extend for an additional height not to exceed 50 feet above the average grade line of the building. Water stand pipes and tanks, church steeples, domes and spires, ornamental cupolas, city or school district buildings, and institutional buildings may be approved to exceed the height limit at the time the city reviews the applicable required plan.

g. *Refuse facilities in the MF and MHP Districts.* Refuse containers shall be located no closer than 30 feet to any adjacent single-family property, shall be located so as to provide safe and convenient pickup by refuse collection agencies, and shall be screened in accordance with section. (See Illustration 50-115-1 within this chapter for refuse container enclosure diagrams).

h. *Other regulations may apply.* Other regulations may be established by the individual residential district, article III of this chapter and by other regulations within this development standards part of the zoning ordinance. In any case in which regulations conflict, the more stringent standards shall apply.

(2) *Nonresidential districts.* For all nonresidential zoning districts, the following shall apply:

a. *Temporary outdoor sales.* Temporary outdoor retail sales, excluding those uses in the use charts (section 50-82) with normal outdoor sales such as automobile lots, which involve the outside display of merchandise and seasonal items (refer to the section 50-2, definitions), shall be limited to the following:

1. Shall not be placed/located more than 30 feet from the main building in GR, and C Districts, and not more than 12 feet from the main building in the Old Town area.

2. Shall not occupy any of the parking spaces that are required by this chapter for the primary uses of the property (except on a temporary basis only, which is a maximum of 30 days per display and a maximum of two displays per calendar year).

3. Shall not pose a safety or visibility hazard, nor impede public vehicular or pedestrian circulation, either onsite or off site, in any way.

4. Shall not extend into public right-of-way or onto adjacent property.

5. All outside display items shall be removed at the end of business each day (except for large seasonal items such as Christmas trees).

6. All merchandise shall be displayed in a neat, orderly manner, and the display area shall be maintained in a clean, litter-free manner.

b. *Temporary seasonal sales.* Temporary seasonal sales shall be limited to the following:

1. Are allowed in the GR, C, and OT and MU Districts.

2. May occupy the parking spaces that are required by this chapter for the primary uses of the property for seasonal sales on a temporary basis only, which is a maximum of 30 days per display of seasonal materials and a maximum of two displays per calendar year, provided parking is adequate and not overloading the streets or adjacent properties.

3. Shall not pose a safety or visibility hazard, nor impede public vehicular or pedestrian circulation, either onsite or off site, in any way.

4. Shall not extend into public right-of-way or onto adjacent property.

5. All merchandise shall be displayed in a neat, orderly manner, and the display area shall be maintained in a clean, litter-free manner.

c. *Outside storage.* Outdoor storage shall be limited to the following:

1. Is prohibited in O District.

2. Is permitted in the GR, OT and MU and C Districts with certain standards outlined in the zoning district.

3. Is permitted in the Industrial District.

4. Shall be located behind the front building line and observe all setback requirements for the main structure or building.

5. Shall be visually screened from any public street or adjacent property with a minimum six-foot solid wall or fence.

6. Note: Outside storage is not outdoor sales; see definitions in section 50-2

d. *Temporary storage containers.* Temporary storage containers shall be limited to the following:

1. Are prohibited in O and OT and MU Districts, except in accordance with c. below.

2. Are allowed in GR, C and I Districts provided they do not occupy required parking or loading areas and is behind required setbacks and not contained in a front or side setback adjacent to a street.

3. May be used in all nonresidential districts on a temporary basis during construction while a valid permit exists. If the business is closed or limited during construction, the containers may occupy required parking.

e. *Use of RVs, travel trailers, and motor homes.* Recreational vehicles, travel trailers or motor homes may not be used for nonresidential purposes.

f. *Elements permitted to extend above height limitations.* Cooling towers may extend for an additional height not to exceed 50 feet above the average grade line of the building. Water stand pipes and tanks, church steeples, domes and spires, ornamental cupolas, city or school district buildings, and institutional buildings may be approved to exceed the height limit at the time the city reviews the applicable required plan.

g. *Other regulations may apply.* Other regulations may be established by the individual residential district, article III of this chapter and by other regulations within this development standards part of this chapter. In any case in which regulations conflict, the more stringent standards shall apply.

(e) *Communications antennas and support structures/towers.* The following requirements shall apply to communications antennas and support structures/towers:

(1) *Applicability.*

a. These regulations apply to all commercial and amateur antennae and support structures, unless exempted in subsection (e)(1)b of this section.

b. Direct broadcast satellite reception, multi-channel multi-point distribution (as defined by the FCC), television reception antenna, and amateur radio antennae meeting the following requirements do not require a permit unless mounted on a pole or mast that is 20 feet or more in height:

1. In any zoning district, antennae that are one meter (i.e., 39 inches) or less in diameter;

2. In a nonresidential zoning district, antennae that are two meters or less in diameter;

3. In any zoning district, antennae designed to only receive television broadcasts;

4. In any zoning district, amateur radio antennae concealed behind or located upon or within attics, eaves, gutters or roofing components of the building; and

5. In any zoning district, amateur radio ground-mounted whips and wire antennae.

c. Support structures or antennae legally installed before the effective date of the ordinance from which this chapter is derived are not required to comply with this chapter, but must meet all applicable state, federal and local requirements, building codes and safety standards.

(2) *Special definitions.* For the purpose of this section, the following special definitions shall apply:

Antenna, microwave reflector, wireless communication, and antenna support structure means an antenna is the arrangement of wires or metal rods used in transmission, retransmission and/or reception of radio, television, electromagnetic or microwave signals (includes microwave reflectors/antennae). The term "microwave reflector" means an apparatus constructed of solid, open mesh, bar-configured, or perforated materials of any shape/configuration that is used to receive and/or transmit microwave signals from a terrestrial or orbitally located transmitter or transmitter relay. Microwave reflectors are also commonly referred to as satellite receive only earth stations (T.V.R.O.S.), or satellite dishes. The term "antenna support structure" includes any tower, mast, pole, tripod, box frame, or other structure utilized for the purpose of supporting one or more antennae or microwave reflectors. This definition specifically includes towers (radio, television, microwave, wireless, etc.), mobile antennas, and any type of similar structure that may be temporary.

Antenna (commercial) means an antenna or antenna support structure used for the purpose of transmission, retransmission, and/or reception of radio, television, electromagnetic, or microwave signals primarily for the purpose of operating a business and/or for financial gain (e.g., commercial broadcasting, cellular/wireless telecommunications, etc.). A satellite dish antenna that exceeds six feet in diameter shall also be considered as a commercial antenna.

Antenna (non-commercial/amateur) means an antenna or antenna support structure used for the purpose of transmission, retransmission, and/or reception of radio, television, electromagnetic, or microwave signals for private or personal use and not for the purpose of operating a business and/or for financial gain. A satellite dish antenna not exceeding six feet in diameter shall also be considered as a non-commercial antenna.

Collocation means the use of a single support structure and/or site by more than one communications provider.

Communications operations (commercial) means the transmission, retransmission, and/or reception of radio, television, electromagnetic, or microwave signals primarily for the purpose of operating a business and/or for financial gain.

Communications operations (non-commercial/amateur) means the transmission, retransmission and/or reception of radio, television, electromagnetic, or microwave signals for private or personal use, and not for the purpose of operating a business and/or for financial gain.

Height means the distance measured from the finished grade of the lot/parcel to the highest point on the support structure or other structure, including the base pad and any antennae.

(3) *General requirements.*

a. Antennae and support structures may be considered either principal or accessory uses.

b. Antenna installations shall comply with all other requirements of this chapter and the city Code of Ordinances with the exception of those specifically cited within these regulations.

c. No commercial antenna support structure shall be closer to any residential district boundary line or residential dwelling than a distance equal to twice the height of the support structure. Such setback/distance shall be measured as the shortest possible

distance in a straight line from the structure to the closest point of a residential district boundary line or residential dwelling. Setbacks from residentially zoned property do not apply to antennas attached to utility structures that exceed 50 feet in height, or to antennae placed wholly within or mounted upon a building (refer to subsection (c) of this section).

d. No amateur or commercial antenna, antenna support structure, microwave reflector/antenna, or associated foundations or support wires or appurtenances shall be located within any required setback area for the front, side or rear yards.

e. All antenna and support structures must meet or exceed the current standards and regulations of the Federal Communications Commission (FCC), the Federal Aviation Administration (FAA), and/or all other applicable federal, state and local authorities. If those standards change, then the owner/user of an antenna or support structure must bring the antenna/structure into compliance within 180 calendar days or as may otherwise be required by the applicable regulating authority.

f. A building permit is required to erect or install an antenna, antenna support structure and related structures/equipment, unless the particular antenna is exempt from these regulations (see subsection (e)(3)b of this section). All installations shall comply with applicable federal, state and local building codes and the standards published by the electronic industries association. Owners/users shall have 30 calendar days after receiving notice that an installation is in violation of applicable codes in order to bring it into full compliance.

g. Antennae (amateur or commercial) shall not create electromagnetic or other interference with the city's and the county's radio frequencies and public safety operations, as required by the FCC. In accordance with FCC regulations, antennae also shall not interfere with radio or television reception of nearby property owners. In no manner shall the use of such equipment infringe upon adjoining property owners.

h. No antenna or support structure shall be located so as to create a visual obstruction within critical visibility areas (such as at street intersections or where a private driveway enters a roadway) or a traffic safety problem.

i. Safeguards shall be utilized to prevent unauthorized access to an antenna installation (e.g., on a water tower or utility structure, a free-standing installation, etc.). Safeguards include certain devices identified/recommended by the manufacturer of the antenna or support structure, a fence, a climbing guard, or other commercially available safety devices. Climbing spikes or other similar climbing device, if utilized, shall be removed immediately following use.

j. Temporary antenna shall only be allowed in the following instances:

    1. In conjunction with a festival, carnival, rodeo or other special event/activity;

    2. In case of an emergency (e.g., severe weather, etc.) or a news coverage event;

    3. When needed to restore service on a temporary basis after failure of an antenna installation. The city must be notified within 72 hours of the placement of a temporary antenna. If the temporary antenna is to be needed for more than seven calendar days, then the owner/user must apply for and acquire a permit for the temporary installation on or before the eighth day following initial placement of the antenna.

k. Collection is greatly encouraged by the city.

    1. All new support structures over 50 feet in height shall be constructed to support antennae for at least two carriers, unless the structure is an alternative or stealth design, or the support structure is replacing an existing utility structure or light standard. Sufficient area for associated structures and equipment shall also be provided.

2. A support structure which is modified or reconstructed in order to accommodate collection shall be of the same type, design and height as the existing structure, and it may be moved on the same property within 50 feet of its original location provided that it is not moved any closer to residentially zoned property (if the structure was allowed by CUP, then its new location shall be within the physical/land boundaries of the CUP). The original (i.e., former) support structure shall be removed from the property within 30 calendar days following completion of the new structure.

3. Where an additional antenna is to be attached to an existing support structure that already has an antenna mounted upon it, the new antenna shall comply with and be compatible with the design of the existing antenna on the collocated structure.

l. Support buildings and equipment storage areas/buildings shall be screened from public view if mounted on a rooftop. When ground mounted, they shall meet all applicable front, side and rear yard setback requirements of the applicable base zoning district.

m. Satellite dishes, television antennas, and other similar antennas shall be permitted on the roof of a building, as long as satellite dishes do not exceed one meter (39 inches) in diameter and antennae do not extend over ten feet above the roof of the building. A letter certifying the roof's/building's structural stability shall be written and sealed by a registered architect or engineer, and shall be submitted to the building official, or his designee, prior to any approval of a roof-mounted antenna. Roof-mounted antenna that comply with the provisions of these regulations do not require additional yard setbacks or setbacks from residential areas or dwellings.

n. Only one amateur antenna/support structure shall be permitted per residential lot, except that a maximum of two satellite dishes may be allowed if both units are no larger than one meter (39 inches) in diameter (only one allowed if over one meter in diameter).

o. All commercial signs, flags, lights and attachments other than those required for emergency identification, communications operations, structural stability, or as required for flight visibility by the FAA and/or FCC shall be prohibited on any antenna or antenna support structure. However, lights may remain or be placed upon light standards that are altered or replaced in order for them to serve as antenna support structures provided that said lights are not commercial (i.e., for-profit) in nature, and provided that said lights are placed/replaced as the same size, configuration, number of bulbs, degree of luminance, etc. as they previously existed prior to support structure modification/replacement.

p. Any publicly owned antennae or antenna support structures are exempt from regulation by this chapter (e.g., public safety communications, etc.).

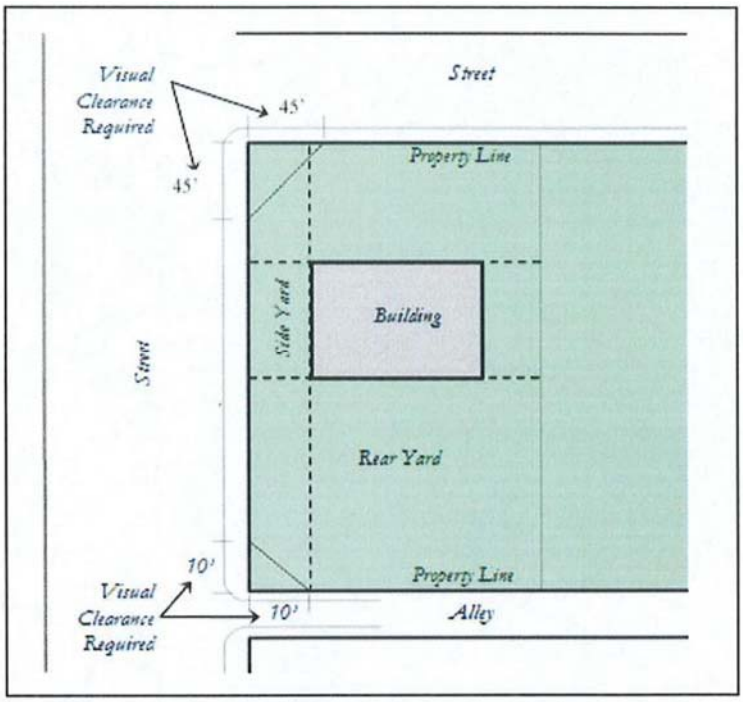
q. Location requirements for commercial antennas. A commercial antenna support structure not allowed by right through another provision of this section may be allowed in any zoning district by conditional use permit (CUP) provided that it shall be no closer than a distance equal to twice the height of the support structure to any residentially zoned lot and/or to any residential use. Such setback shall be measured as the shortest distance in a straight line from the structure to the closest point of any residential zoned lot other than the lot upon which the support structure is located.

(f) *Sight visibility.* The following requirements shall apply to sight visibility:

(1) Visual clearance shall be provided in all zoning districts so that no fence, wall, architectural screen, earth mounding, landscaping or other feature obstructs the vision of a motor vehicle driver approaching any street, alley, or driveway intersection. Whenever an intersection of two or more public street rights-of-way occurs, a 45-foot triangular visibility area in accordance with chapter 38, article II shall be created and apply to landscaping, fences, walls, signs, earthen berms and other features. Any features within the triangular visibility area shall be in accordance with such requirements and provide unobstructed cross-visibility at a level between 36 inches and 15 feet. Trees may be permitted in this area in accordance with section 50-113 provided they are trimmed in such a manner that no limbs or foliage extend into the cross-

visibility area. In addition to the 45-foot visibility triangle at the intersection of two streets as required in chapter 38, article II, the following visibility triangular areas meeting the same requirements are required:

Illustration 50-116-5: Visual clearance



a. The areas of property on both sides of the intersection of an alley accessway and public right-of-way shall have a triangular visibility area with two sides of each triangle being a minimum of ten feet in length from the point of intersection and the third side being a line connecting the ends of the other two sides.

b. The areas of property located at a corner formed by the intersection of a private driveway onto a public road shall have a triangular visibility area with two sides of each triangle being a minimum of 20 feet in length along the right-of-way lines (or along the driveway curbline and the road right-of-way line) from the point of the intersection and the third side being a line connecting the ends of the other two sides. (See Illustration 50-116-5 of this chapter).

(2) Landscaping, except required grass and low ground cover, shall not be located closer than three feet from the edge of any accessway pavement on arterial or collector streets as shown on the adopted comprehensive plan.

(3) Shrubs and plant materials that are typically less than 24 inches in height at maturity may be located within sight visibility areas provided that they are kept maintained at a maximum height of 24 inches.

(4) A limited number of single-trunked trees having a clear trunk (i.e., branching) height of at least eight feet may be located within sight visibility areas, provided that they are trimmed in such a manner that no limbs or foliage extend into the cross-visibility area defined in this section, and provided that they are spaced and positioned such that their trunks will not produce a visibility inhibiting, "picket-fence" effect when they attain mature size.

(g) *Garage or yard sales.* In connection with the residential or institutional occupancy of a structure, the tenants may offer their personal belongings and household effects for sale to the general public

provided that such sales are not conducted on the same lot for more than three days (whether consecutive or not) during any 90-day period.

(h) *Temporary structures and uses.* Any temporary use, structure or building permitted under this chapter shall comply with all applicable development standards and setback requirements in the district in which the temporary use, structure or building is located, unless otherwise specified herein.

(1) Temporary construction office. Temporary construction offices, including trailers and modular offices, are permitted on or adjacent to any site during which construction is undertaken pursuant to a valid building permit. Temporary construction offices may be occupied for office or security purposes, or may be used for storage of equipment and material used during construction of the site. Upon completion or abandonment of construction or expiration of the building permit, the temporary construction office shall be removed at the owner's expense.

(2) Temporary real estate field office. Temporary real estate sales offices, including trailers and modular offices, shall be permitted in accordance with section 50-82, use regulations when incidental to a residential development. Temporary sales offices shall be located and developed in compliance with the following standards:

a. The temporary sales office shall be located within the boundaries of the subdivision or tract of land in which the real property is to be sold or leased; and on a property whereon a recorded plat exists and a valid permit for construction has been issued;

b. Parking shall be permitted on the lot in which the office is located or on an adjacent lot;

c. Permitted temporary real estate sales offices shall not be used as any type of dwelling;

d. Use of the temporary real estate sales office for the sale or lease of residential sites or projects located off-site is prohibited; and

e. All temporary real estate sales offices shall be removed within 30 days after the sale of the last dwelling unit in the development, or within 30 days after 12 continuous months of no construction or sales activity.

(i) *Model home (including sales office).* Model homes with or without a sales office shall be permitted in accordance with section 50-82, use regulations when incidental to a residential development. Model homes shall be located and developed in compliance with the following standards:

(1) The model home shall be located within the boundaries of the subdivision or tract of land where the real property to be sold or leased is situated.

(2) Parking shall be permitted on the lot in which the model home is located or on an adjacent lot.

(3) The model home shall be designed as a permanent structure and shall comply with the provisions of this chapter, all applicable building codes of the city, and state law.

(4) All exterior lighting shall be limited to typical household exterior lighting. The use of commercial grade ground mounted floodlights and search lights are prohibited.

(5) The model home shall cease operation within 30 days after the sale of the last dwelling unit in the development, at which time the model home shall be vacated and a building permit issued to return the model home to its intended residential use only.

(6) There shall be no permanent use of temporary buildings or temporary structures.

(7) Temporary signage and flagpoles advertising the sale of property within the residential development shall not be prohibited provided they comply with the sign ordinance, are permitted, and are maintained at least ten feet away from all lot lines.

(8) Temporary buildings shall be permitted for denominational schools and public school districts with the following conditions:

a. Denominational schools and public school districts may have temporary buildings for a time period not to exceed two years for each temporary building.

b. Denominational schools and the public school district shall not place a temporary building on any property before receiving approval by city council. Prior to city council review, each building must be inspected by an independent building inspector. The cost of the inspection shall be borne by the applicant.

c. City council may approve by resolution two year extensions for each temporary building. Prior to issuance of any extension, each building must be inspected by an independent building inspector. The cost of the inspection shall be borne by the applicant.

d. The use of the temporary buildings must be to further the core mission of the denominational school or public school district.

e. A temporary building may only be placed on an active school campus where students are in attendance.

f. Each temporary building must be located on property owned by the denominational school or public school district.

g. A temporary building shall be screened by landscaping, as approved by the city manager or his designee.

(Ord. No. 2008-01, § 43, 2-4-2008; Ord. No. 2010-09, § 3, 5-3-2010; Ord. No. 2012-30, § 2, 9-17-2012; Ord. No. 2013-14, § 2, 2-9-2013)

Sec. 50-117. Home occupation regulations.

(a) *Purpose.* Standards for home occupations are set forth to minimize annoyance and inconvenience to neighboring property owners within residential areas. These standards are intended to allow reasonable and comfortable enjoyment of adjacent and nearby property by their owners and by occupants of neighboring residential dwellings, while providing opportunities for the pursuit of home-based businesses. For the purposes of these regulations, a home occupation is described as an occupation that is carried on in a dwelling unit, or in an accessory building to a dwelling unit, by a resident of the premises only, which is clearly incidental and secondary to the use of the premises for residential purposes, and which can be conducted without any significantly adverse impact on the surrounding neighborhood.

(b) *Special provisions for home occupations.*

(1) Home occupations shall be permitted as accessory uses in single- and two-family residential zoning districts, provided that they comply with all restrictions herein.

(2) The occupation shall produce no alteration or change in the character or exterior appearance of the principal building from that of a residential dwelling, shall have no signs and performance of the occupation activity shall not be visible from the street.

(3) Such use shall be incidental and secondary to the use of the premises for residential purposes, and shall not utilize floor area exceeding 25 percent of the combined gross floor area of dwelling unit and any accessory buildings that are used for the home occupation. In no case shall the combined floor area utilized for a home occupation exceed 500 square feet.

(4) Not more than two patron or business-related vehicles shall be present at one time.

(5) The operation of such an occupation shall be between the hours of 8:00 a.m. and 6:00 p.m. for outdoor activities, and between 8:00 a.m. and 10:00 p.m. for indoor activities.

(6) The occupation activity shall not increase vehicular traffic flow beyond what normally occurs within a residential district, and shall not require regular and frequent deliveries by large delivery trucks or vehicles with a rated capacity in excess of 1½ tons, according to the manufacturer's classification.

(7) There shall be no outside storage, including trailers, or outside display related to the home occupation use.

(8) No mechanical or electrical equipment shall be employed on the premises other than that which is customarily found in a home environment, and that which is customarily associated with a hobby or avocation which is conducted solely for pleasure and not for profit or financial gain.

(9) The home occupation shall not generate noise, vibration, glare, fumes/odors, heat or electrical interference beyond what normally occurs within a residential district.

(10) The occupation shall not require the use of chemicals on the property that are obnoxious or hazardous to the welfare of the neighborhood.

(11) The home occupation shall not involve the use of advertising signs or window displays, or any other device that calls attention to the business use of the premises through audio and/or visual means.

(12) The occupation shall not offer a ready inventory of any commodity for sale on the premises (e.g., arts and crafts items, handmade clothing, etc.).

(13) The occupation shall not be harmful or detrimental to the health, welfare and safety of the neighborhood, nor shall it interfere with the comfortable enjoyment of life, property and recreation by residents of the area.

(c) *Applicability of other regulations.* Home occupations shall also be subject to any and all other provisions of local, state and/or federal regulations and laws that govern such uses.

(d) *Uses allowed as home occupations.* Subject to the provisions of subsection (b) of this section, home occupations may include the following uses:

(1) Office facility of an accountant, architect, landscape architect, attorney, engineer, consultant, insurance agent, realtor, broker, or similar profession;

(2) Author, artist or sculptor;

(3) Dressmaker, seamstress or tailor;

(4) Music/dance teacher, or similar types of instruction, provided that instruction shall be limited to no more than four pupils at a time;

(5) Individual tutoring and home schooling;

(6) Millinery;

(7) Office facility of a minister, rabbi, priest or other clergyman;

(8) Home crafts, such as rug weaving, model making, etc;

(9) Office facility of a salesman, sales or manufacturer's representative, etc., provided that no retail or wholesale transactions or provisions of services are personally and physically made on the premises;

(10) Repair shop for small electrical appliances, cameras, watches/clocks, and other small items, provided that the items can be carried by one person without using special equipment, and provided that the items are not equipped with an internal combustion engine;

(11) Food preparation establishments such as cake making/decorating or catering, provided that there is no on-premises consumption by customers, and provided that all aspects of the business comply with all state and local health regulations;

(12) Registered family homes (see definition in section 50-2), in compliance with applicable state laws, which are incorporated herein by reference, with no more than six children;

(13) Swimming lessons and water safety instruction, provided that such instruction involves no more than four pupils at any one time; and

(14) The building official or his designee shall have discretion to examine all the above factors and any supplemental information provided by the applicant and make a determination of whether the size, scale and effect on neighboring properties and authorize or deny a particular home

occupation. Appeals of his decision shall be to the board of adjustments upon proper notice to adjacent property owners.

(e) *Home occupation uses not classified.* Any use that is not expressly allowed by subsection (d) of this section is considered prohibited, unless and until such use is classified by amendment to this chapter.

(Ord. No. 2008-01, § 44, 2-4-2008)

CODE COMPARATIVE TABLE 1978 CODE

This table gives the location within this Code of those sections of the 1978 Code, as supplemented, which are included herein. Sections of the 1978 Code, as supplemented, not listed herein have been omitted as repealed, superseded, obsolete or not of a general and permanent nature.

1978 Code Section	Section this Code
1-1	1-1
1-2	1-2
1-4	1-3
1-5	1-4
1-6	1-5
1-7	1-6
1-8	1-12
1-9	1-13
1-10	1-14
1-11	1-14
1-12	1-15
1-13	1-16
2-25	1-14
2-26	2-19
2-29	2-20
2-30	2-21

2-31	2-22
2-41	2-54
2-42	2-55
2-44	2-56
2-45	2-57
2-60	2-88
2-62	2-89
2-63	2-90
2-65	2-91
2-74	2-112
2-75	2-113
2-76	2-114
2-77	2-115
2-78	2-116
2-79	2-117
2-80	2-118
2-81	2-119
2-107	1-9
2-108	1-11
2-109	1-7

2-110	1-8
2-111	1-10
2-113	1-11
2-132	2-137
2-133	2-138
2-134	2-139
2-135	2-140
2-136	2-141
2-137	2-142
2-138	2-143
2-139	2-144
2-140	2-145
2-141	2-146
2-142	2-147
2-143	2-148
3-1	4-1
3-2	4-2
3-16	4-23
3-18	4-24
3-19	4-25

3-20	4-26
3-21	4-27
4-1	8-1
4-2	8-2
4-16	8-23
4-17	8-26
4-18	8-56
4-19	8-57
4-20	8-58
4-21	8-59
4-22	8-60
4-23	8-61
4-24	8-62
4-25	8-63
4-26	8-64
4-27	8-65
4-28	8-66
4-30	8-67
4-31	8-68
4-32	8-69

4-33	8-70
4-34	8-71
4-35	8-103
4-36	8-104
4-39	8-24
4-40	8-25
4-44	8-122
4-45	8-123
4-46	8-124
4-47	8-125
4-59	8-151
4-60	8-152
4-61	8-153
4-73	8-175
4-74	8-176
4-75	8-177
4-76	8-178
4-77	8-179
4-80	8-180
4-92	8-201

4-93	8-202
4-94	8-203
4-95	8-204
4-96	8-205
5-2	10-1
5-8	18-192
5-9	50-77, 50-78
5-11	18-167
5-34	10-78
5-39	10-79
5-41	10-80
5-42	10-81
5-43	10-82
5-44	10-83
5-45	10-84
5-61	46-297
5-62	46-298
5-63	46-299
5-64	46-300
5-65	46-301

5-66	46-302
5-71	38-125
5-72	38-126
5-73	38-127
5-74	38-128
5-75	38-129
5-76	38-130
5-81	46-269
5-82	46-270
5-83	46-271
5-84	46-272
5-85	46-273
5-86	46-274
8-1	20-94
8-2	20-95
8-3	20-96
8-4	20-97
8-5	20-98
9-1	36-1
9-2	36-2

9-4	36-3
9-5	36-4
9-16	36-27
9-17	36-28
9-18	36-29
9-19	36-30
9-20	36-31
9-21	36-32
9-22	36-33
9-23	36-34
9-24	36-35
9-31	36-59
9-32	36-60
9-33	36-61
9-34	36-62
9-35	36-63
9-36	36-64
9-37	36-65
9-38	36-66
9-39	36-67

9-40	36-68
9-41	36-69
9-50	36-98
9-51	36-99
9-52	36-97
9-55	36-100
9-56	36-101
9-57	36-102
9-58	36-103
9-59	36-104
10-16	22-19
10-17	22-20
10-18	22-21
10-20	22-23
10-21	22-24
11-17	10-49
11-18	10-50
11-33	10-468
11-34	10-469
11-35	10-470

11-36	10-467
11-37	10-471
11-38	10-472
11-39	10-473
11-40	10-474
11-41	10-475
11-42	10-476
12-1	18-216
12-2	18-217
12-3	18-218
12-4	18-219
12-5	18-220
12-6	18-221
12-7	18-222
12-8	18-223
12-9	18-224
12-10	18-225
12-11	18-226
12-12	18-227, 18-228
12-13	18-229

12-14	18-230
13-1	6-1
13-3	30-1
13-4	18-168
15-1	18-163
15-2	18-164
15-3	18-165
15-9	18-166
17-1	32-1
17-2	32-2
17-3	32-3
17-4	32-4
17-6	32-5
17-7	32-6
17-8	32-7
17-20	32-41
17-21	32-42
17-22	32-43
17-23	32-44
17-24	32-45

17-25	32-46
17-26	32-47
17-27	32-48
17-28	32-49
17-29	32-50
17-30	32-51
17-31	32-52
17-32	32-53
17-33	32-54
17-34	32-55
19-1	10-333
20-17	24-19
20-18	24-20
20-19	24-21
20-20	24-22
20-21	24-23
20-22	24-24
20-23	24-25
20-25	24-26
20-26	24-27

20-27	24-28
20-28	24-29
20-41	24-49
20-42	24-50
20-43	24-51
20-44	24-52
20-45	24-53
20-46	24-54
20-47	24-55
21-2	44-249
21-4	44-250
21-5	44-251
21.5-1	22-113
21.5-2	22-115
21.5-3	22-116
21.5-4	22-117
21.5-5	22-118
21.5-6	22-119
21.5-7	22-120
21.5-8	22-114

22-1	38-1
22-3	38-2
22-5	38-3
22-6	38-4
22-7	38-5
22-8	38-6
22-20	38-31
22-21	38-32
22-50	38-57
22-51	38-58
22-52	38-59
22-53	38-60
22-54	38-61
22-55	38-62
22-56	38-63
22-57	38-64
22-70	38-89
22-71	38-90
22-72	38-91
22-73	38-92

22-74	38-93
22-75	38-94
22-76	38-95
22-77	38-96
22-78	38-97
22-79	38-98
22.5-1	2-239
23-2	44-1
23-3	44-2
23-4	44-3
23-5	44-4
23-6	44-5
23-8	44-6
23-16	44-31
23-20	44-32
23-21	44-33
23-22	44-34
23-23	44-35
23-33	44-59
23-35	44-60

23-36	44-61
23-37	44-62
23-38	44-63
23-39	44-64
23-40	44-65
23-41	44-66
23-50	44-95
23-51	44-96
23-52	44-97
23-53	44-98
23-54	44-99
23-55	44-100
23-56	44-101
23-57	44-102
23-58	44-103
23-59	44-104
23-60	44-105
23-61	44-106
23-66	44-126
23-67	44-127

23-68	44-128
23-69	44-129
23-70	44-130
23-71	44-131
23-78	44-161
23-79	44-162
23-80	44-163
23-81	44-164
23-82	44-165
23-90	44-186
23-91	44-187
23-92	44-188
23-104	44-215
23-105	44-216
23-106	44-217
23-107	44-218
23-108	44-219
23-109	44-220
24-1	46-1
24-2	46-2

24-3	46-3
24-4	46-4
24-5	46-5
24-6	46-6
24-7	46-7
24-8	46-8
24-9	46-9
24-10	46-10
24-11	46-11
24-12	46-12
24-13	46-13
24-14	46-14
24-15	46-15
24-16	46-16
24-17	46-17
24-18	46-18
24-19	46-19
24-20	46-20
24-21	46-21
24-22	46-22

24-23	46-23
24-24	46-24
24-34	46-54
24-35	46-56
24-36	46-57
24-37.1	46-59
24-37	46-58
24-38	46-60
24-39	46-61
24-40	46-62
24-41	46-63
24-42	46-64
24-44	46-65
24-56	46-89
24-57	46-90
24-58	46-91
24-59	46-92
24-60	46-93
24-61	46-94
24-62	46-95

24-63	46-96
24-64	46-97
24-65	46-98
24-66	46-99
24-67	46-100
24-68	46-101
24-69	46-102
24-70	46-103, 46-104
24-72	46-105
24-73	46-106
24-74	46-107
24-75	46-108
24-76	46-109
24-77	46-110
24-78	46-111
24-79	46-112
24-80	46-113
24-82	46-114

CODE COMPARATIVE TABLE 1993 CODE

This table gives the location within this Code of those sections of the 1993 Code, as supplemented, which are included herein. Sections of the 1993 Code, as supplemented, not listed herein have been omitted as repealed, superseded, obsolete or not of a general and permanent nature. For the location of ordinances adopted subsequent thereto, see the table immediately following this table.

1993 Code Section	Section this Code
1-1	1-1
1-2	1-2
1-3	1-3
1-4	1-4
1-5	1-5
1-6	1-6
1-7	1-7
1-8	1-8
1-9	1-9
1-10	1-10
1-11	1-11
1-12	1-12
1-13	1-13
1-14	1-14
1-15	1-14
1-16	1-15

1-17	1-16
1-18	1-17
2-28	1-14
2-29	2-19
2-30	2-20
2-31	2-21
2-32	2-22
2-33	2-23
2-34	2-24
2-35	2-25
2-46	2-54
2-47	2-55
2-48	2-56
2-49	2-57
2-71	2-88
2-72	2-89
2-73	2-90
2-75	2-91
2-106	2-111
2-107	2-112

2-108	2-113
2-109	2-114
2-110	2-115
2-111	2-116
2-112	2-117
2-113	2-118
2-114	2-119
2-126	2-137
2-127	2-138
2-128	2-139
2-129	2-140
2-130	2-141
2-131	2-142
2-132	2-143
2-133	2-144
2-134	2-145
2-135	2-146
2-136	2-147
2-137	2-148
2-138	2-149

2-139	2-150
2-176	2-169
2-177	2-170
2-178	2-171
2-179	2-172
2-180	2-173
2-181	2-174
2-182	2-175
2-183	2-176
2-184	2-177
2-185	2-178
2-191	2-210
2-192	2-211
2-193	2-212
2-194	2-213
2-195	2-214
2-196	2-215
2-201	2-239
2-216	2-288
2-217	2-289

2-218	2-290
2-219	2-291
2-220	2-292
2-221	2-293
2-222	2-294
2-223	2-295
2-224	2-296
2-236	2-326
2-237	2-327
2-251	2-358
2-252	2-359
2-311	2-463
2-312	2-464
2-313	2-465
2-314	2-466
2-315	2-467
6-1	4-1
6-2	4-2
6-26	4-23
6-28	4-24

6-29	4-25
6-30	4-26
6-31	4-27
10-1	8-1
10-2	8-2
10-26	8-23
10-27	8-24
10-28	8-25
10-29	8-26
10-41	8-56
10-42	8-57
10-43	8-58
10-44	8-59
10-45	8-60
10-46	8-61
10-47	8-62
10-48	8-63
10-49	8-64
10-50	8-65
10-51	8-66

10-53	8-67
10-54	8-68
10-55	8-69
10-56	8-70
10-57	8-71
10-71	8-103
10-72	8-104
10-96	8-122
10-97	8-123
10-98	8-124
10-99	8-125
10-100	8-126
10-121	8-151
10-122	8-152
10-123	8-153
10-146	8-175
10-147	8-176
10-148	8-177
10-149	8-178
10-150	8-179

10-176	8-201
10-177	8-202
10-178	8-203
10-179	8-204
10-180	8-205
14-2	10-1
14-8	18-192
14-9	50-77, 50-78
14-11	18-167
14-15	10-238
14-35	10-21
14-36	10-22
14-65	10-76
14-66	10-77
14-67	10-78
14-72	10-79
14-73	10-80
14-74	10-81
14-75	10-82
14-76	10-83

14-77	10-84
14-100	10-112
14-101	10-113
14-103	10-114
14-115	10-142
14-117	10-143
14-118	10-144
14-119	10-145
14-120	10-146
14-121	10-147
14-122	10-148
14-123	10-149
14-124	10-150
14-125	10-151
14-126	10-152
14-140	10-171
14-141	10-172
14-147	10-173
14-185	10-211
14-194	10-212

14-195	10-213
14-196	10-214
14-210	10-237
14-230	10-270
14-234	10-271
14-245	10-291
14-246	10-292
14-247	10-293
14-251	10-294
14-252	10-295
14-253	10-296
14-254	10-297
14-255	10-298
14-261	10-299
14-262	10-300
14-263	10-301
14-264	10-302
14-269	10-303
14-272	10-304
14-285	10-305

14-293	10-306
14-325	10-48
14-326	10-49
14-327	10-50
14-328	10-51
14-341	10-467
14-342	10-468
14-343	10-469
14-344	10-470
14-345	10-471
14-346	10-472
14-347	10-473
14-348	10-474
14-349	10-475
14-350	10-476
14-390	10-333
14-405	10-357
14-406	10-358
14-430	10-369
14-435	10-370

14-436	10-371
14-440	10-372
14-441	10-373
14-450	10-374
14-451	10-375
14-460	10-376
14-461	10-377
14-474	10-378
14-486	10-379
18-1	6-21
18-2	6-22
18-3	6-23
18-4	6-24
18-5	6-25
18-6	6-26
18-7	6-27
18-8	6-28
18-9	6-29
18-10	6-30
18-11	6-31

18-12	6-32
18-13	6-33
18-14	6-34
18-15	6-35
18-16	6-36
18-17	6-37
18-18	6-38
18-19	6-39
18-20	6-40
18-21	6-41
18-22	6-42
18-23	6-43
18-25	4-58
18-26	4-59
18-28	4-60
22-26	14-1
22-27	14-2
22-28	14-3
22-29	14-4
22-30	14-5

22-31	14-7
22-32	14-8
22-33	14-9
22-34	14-10
22-35	14-11
30-156	18-163
30-157	18-164
30-158	18-165
30-159	18-166
30-211	18-216
30-212	18-217
30-213	18-218
30-214	18-219
30-215	18-220
30-216	18-221
30-217	18-222
30-218	18-223
30-219	18-224
30-220	18-225
30-221	18-226

30-222	18-227
30-223	18-228
30-224	18-229
30-225	18-230
34-1	20-94
34-2	20-95
34-3	20-96
34-4	20-97
34-5	20-98
34-71	20-25
34-73	20-27
34-74	20-28
34-91	20-47
34-92	20-48
34-93	20-70
34-94	20-71
34-95	20-72
34-96	20-73
34-97	20-74
34-98	20-75

42-1	18-168
42-61	22-19
42-62	22-20
42-63	22-21
42-64	22-22
42-65	22-23
42-66	22-24
42-86	22-52
42-88	22-53
42-89	22-54
42-90	22-55
42-91	22-56
42-101	22-86
42-102	22-87
42-103	22-88
42-104	22-89
42-105	22-90
42-106	22-91
42-107	22-92
42-131	22-113

42-132	22-114
42-133	22-115
42-134	22-116
42-135	22-117
42-136	22-118
42-137	22-119
42-138	22-120
46-21	26-1
46-22	26-2
46-26	26-23
46-27	26-24
46-28	26-25
46-29	26-26
46-30	26-27
46-31	26-28
46-32	26-29
46-33	26-30
46-34	26-31
46-35	26-32
46-36	26-33

46-37	26-34
46-61	26-57
46-62	26-58
46-63	26-59
46-64	26-60
46-65	26-61
46-66	26-62
46-67	26-63
46-68	26-64
46-69	26-65
46-70	26-66
46-71	26-67
46-72	26-68
46-73	26-69
50-1	6-1
50-3	30-1
50-4	14-6
50-71	30-44
50-72	30-45
50-73	30-46

50-74	30-47
50-75	30-48
50-76	30-49
50-91	30-72
50-92	30-73
50-93	30-74
50-106	22-139
50-107	22-140
50-108	22-141
54-1	32-1
54-2	32-2
54-3	32-3
54-4	32-4
54-6	32-5
54-7	32-6
54-8	32-7
54-31	32-41
54-32	32-42
54-33	32-43
54-34	32-44

54-35	32-45
54-36	32-46
54-37	32-47
54-38	32-48
54-39	32-49
54-40	32-50
54-41	32-51
54-42	32-52
54-43	32-53
54-44	32-54
54-45	32-55
58-26	24-19
58-27	24-20
58-28	24-21
58-29	24-22
58-30	24-23
58-31	24-24
58-32	24-25
58-34	24-26
58-35	24-27

58-36	24-28
58-37	24-29
58-61	24-49
58-62	24-50
58-63	24-51
58-64	24-52
58-65	24-53
58-66	24-54
58-67	24-55
60-1	34-1
60-2	34-2
60-3	34-3
60-4	34-4
60-5	34-5
60-6	34-6
60-7	34-7
60-8	34-8
60-9	34-9
60-10	34-10
60-26	34-41

60-27	34-42
60-28	34-43
60-30	34-44, 34-45
60-31	34-46
60-32	34-47
62-1	36-1
62-2	36-2
62-4	36-3
62-5	36-4
62-31	36-27
62-32	36-28
62-33	36-29
62-34	36-30
62-35	36-31
62-36	36-32
62-37	36-33
62-38	36-34
62-39	36-35
62-51	36-59
62-52	36-60

62-53	36-61
62-54	36-62
62-55	36-63
62-56	36-64
62-57	36-65
62-58	36-66
62-59	36-67
62-60	36-68
62-61	36-69
62-71	36-97
62-72	36-98
62-73	36-99
62-74	36-100
62-75	36-101
62-76	36-102
62-77	36-103
62-78	36-104
66-1	38-1
66-3	38-2
66-5	38-3

66-6	38-4
66-7	38-5
66-8	38-6
66-31	38-31
66-32	38-32
66-33	38-33
66-34	38-34
66-76	38-57
66-77	38-58
66-78	38-59
66-79	38-60
66-80	38-61
66-81	38-62
66-82	38-63
66-83	38-64
66-106	38-89
66-107	38-90
66-108	38-91
66-109	38-92
66-110	38-93

66-111	38-94
66-112	38-95
66-113	38-96
66-114	38-97
66-115	38-98
66-136	38-125
66-137	38-126
66-138	38-127
66-139	38-128
66-140	38-129
66-141	38-130
66-166	38-159
66-167	38-160
66-168	38-161
66-169	38-162
66-170	38-163
66-171	38-164
66-172	38-165
66-173	38-166
66-174	38-167

66-175	38-168
66-176	38-169
66-177	38-170
66-178	38-171
66-179	38-172
66-180	38-173
66-181	38-174
66-182	38-175
66-183	38-176
66-184	38-177
66-185	38-178
66-186	38-179
66-187	38-180
70-1	40-1
70-2	40-2
70-3	40-3
70-11	40-27
70-12	40-28
70-13	40-29
70-14	40-30

70-15	40-31
70-16	40-32
70-17	40-33
70-18	40-34
70-19	40-35
70-20	40-36
70-31	40-61
70-32	40-62
70-33	40-63
70-34	40-64
70-35	40-65
70-36	40-66
70-37	40-67
70-38	40-68
70-39	40-69
70-40	40-70
70-41	40-71
70-42	40-72
70-43	40-73
70-44	40-74

70-45	40-75
70-46	40-76
70-47	40-77
70-48	40-78
70-49	40-79
70-50	40-80
70-61	40-104
70-62	40-105
70-63	40-106
70-64	40-107
70-65	40-108
70-66	40-109
74-1	42-1
74-26	42-21
74-27	42-22
74-28	42-23
74-29	42-24
74-30	42-25
74-31	42-26
74-51	42-58

74-52	42-59
74-71	42-77
74-72	42-78
74-73	42-79
76-26	38-199
76-27	38-200
76-28	38-201
76-29	38-202
76-30	38-203
76-31	38-204
76-32	38-205
76-33	38-206
76-34	38-207
78-2	44-1
78-3	44-2
78-4	44-3
78-5	44-4
78-6	44-5
78-8	44-6
78-31	44-31

78-35	44-32
78-36	44-33
78-37	44-34
78-38	44-35
78-63	44-59
78-65	44-60
78-66	44-61
78-67	44-62
78-68	44-63
78-69	44-64
78-70	44-65
78-71	44-66
78-96	44-95
78-97	44-96
78-98	44-97
78-99	44-98
78-100	44-99
78-101	44-100
78-102	44-101
78-103	44-102

78-104	44-103
78-105	44-104
78-106	44-105
78-107	44-106
78-131	44-126
78-132	44-127
78-133	44-128
78-134	44-129
78-135	44-130
78-136	44-131
78-146	44-161
78-147	44-162
78-148	44-163
78-149	44-164
78-150	44-165
78-151	44-166
78-161	44-186
78-162	44-187
78-163	44-188
78-186	44-215

78-187	44-216
78-188	44-217
78-189	44-218
78-190	44-219
78-191	44-220
78-211	44-249
78-213	44-250
78-214	44-251
82-1	46-1
	46-269
82-2	46-2
82-3	46-3
82-4	46-4
82-5	46-5
82-6	46-6
82-7	46-7
82-8	46-8
82-9	46-9
82-10	46-10
82-11	46-11

82-12	46-12
82-13	46-13
82-14	46-14
82-15	46-15
82-16	46-16
82-17	46-17
82-18	46-18
82-19	46-19
82-20	46-20
82-21	46-21
82-22	46-22
82-23	46-23
82-24	46-24
82-25	46-25
82-46	46-54
82-47	46-55
82-48	46-56
82-49	46-57
82-50	46-58
82-51	46-59

82-52	46-60
82-53	46-61
82-54	46-62
82-55	46-63
82-56	46-64
82-58	46-65
82-81	46-89
82-82	46-90
82-83	46-91
82-84	46-92
82-85	46-93
82-86	46-94
82-87	46-95
82-88	46-96
82-89	46-97
82-90	46-98
82-91	46-99
82-92	46-100
82-93	46-101
82-94	46-102

82-95	46-103
82-96	46-104
82-97	46-105
82-98	46-106
82-99	46-107
82-100	46-108
82-101	46-109
82-102	46-110
82-103	46-111
82-104	46-112
82-105	46-113
82-107	46-114
82-108	46-115
82-132	46-144
82-133	46-145
82-134	46-146
82-135	46-147
82-136	46-148
82-137	46-149
82-138	46-150

82-139	46-151
82-140	46-152
82-141	46-153
82-142	46-154
82-143	46-155
82-146	46-156
82-147	46-157
82-148	46-158
82-149	46-159
82-150	46-160
82-151	46-161
82-152	46-162
82-153	46-163
82-154	46-164
82-155	46-165
82-156	46-166
82-166	46-186
82-167	46-187
82-168	46-188
82-181	46-215

82-182	46-216
82-183	46-217
82-190	46-243
82-191	46-244
82-192	46-245
82-207	46-270
82-208	46-271
82-209	46-272
82-210	46-273
82-211	46-274
82-231	46-297
82-232	46-298
82-233	46-299
82-234	46-300
82-235	46-301
82-236	46-302
82-237	46-303
82-251	46-325
82-252	46-326
82-253	46-327

82-254	46-328
82-255	46-329
82-256	46-330
82-257	46-331
82-259	46-333
82-260	46-334
82-261	46-335
82-262	46-336
82-263	46-337
86-26	48-26
86-27	48-27
86-29	48-28
86-30	48-29
86-31	48-30
86-32	48-31
86-33	48-32
86-34	48-33
86-35	48-34
86-36	48-35
86-37	48-36

86-38	48-37
86-40	48-38
86-41	48-39
86-42	48-40
86-56	48-56
86-57	48-57
86-58	48-58
86-59	48-59
86-60	48-60
86-61	48-61
86-62	48-62
86-63	48-63
86-64	48-64
86-65	48-65
86-66	48-66
86-67	48-67
86-81	48-81
86-82	48-82
86-83	48-83
86-84	48-84

86-85	48-85
86-86	48-86
86-87	48-87
86-88	48-88
86-89	48-89
86-90	48-90
86-91	48-91
86-92	48-92
86-106	48-106
86-107	48-107
86-108	48-108
86-109	48-109
86-110	48-110
86-111	48-111
86-112	48-112
86-136	48-136
86-137	48-137
86-138	48-138
86-139	48-139
86-140	48-140

86-141	48-141
86-142	48-142
86-143	48-143
86-161	48-177
86-162	48-177
86-176	48-176
86-177	48-177
86-178	48-178
86-179	48-179
86-180	48-180
86-181	48-181
86-191	48-191
86-192	48-192
86-193	48-193
86-194	48-194
86-195	48-195
86-196	48-196
86-197	48-197
86-198	48-198
86-211	48-211

86-212	48-212
86-213	48-213
86-214	48-214
86-215	48-215
86-216	48-216
86-218	48-217
86-219	48-218
86-220	48-219
86-221	48-220
86-222	48-221

CODE COMPARATIVE TABLE ORDINANCES

This table gives the location within this Code of those ordinances which are included herein. Ordinances not listed herein have been omitted as repealed, superseded or not of a general and permanent nature.

Ordinance Number	Date	Section	Section this Code
88-06	11-21-1988	27-1	48-26
		27-2	48-27
		27-4	48-28
		27-5	48-29
		27-6	48-30
		27-7	48-31
		27-8	48-32
		27-9	48-33
		27-10	48-34
		27-11	48-35
		27-12	48-36
		27-13	48-37
		27-26	48-56
		27-27	48-57
		27-28	48-58
		27-29	48-59

		27-30	48-60
		27-31	48-61
		27-32	48-62
		27-33	48-63
		27-34	48-64
		27-35	48-65
		27-36	48-66
		27-37	48-67
		27-48	48-106
		27-49	48-107
		27-50	48-108
		27-51	48-109
		27-52	48-110
		27-53	48-111
		27-54	48-112
		27-66	48-81
		27-67	48-82
		27-68	48-83
		27-69	48-84
		27-70	48-85

		27-71	48-86
		27-72	48-87
		27-73	48-88
		27-74	48-89
		27-75	48-90
		27-76	48-91
		27-77	48-92
		27-78	48-38
		27-79	48-39
		27-80	48-40
88-12	12-19-1988		46-56
89-01	2-6-1989	2-32	2-23
		2-33	2-24
		2-34	2-25
89-02	2-20-1989	27-49	48-107
89-07	5-1-1989	24-25	46-25
89-09	7-10-1989	1(22.5-40)	42-59
		1(22.5-41)	42-58
89-10	8-21-1989	25-3	22-54
		25-4	22-53

		25-5	22-52
		25-6(a)	22-86
		25-6(b)	22-87
		25-6(c)	22-88
		25-6(d)	22-89
		25-6(e)	22-90
		25-6(f)	22-91
		25-6(g)	22-92
		25-7	22-55
		25-8	22-56
89-11	8-21-1989	1	2-148
		2	2-148
		3	2-148
89-16	10-16-1989	1	2-149
		2	2-149
89-17	12-4-1989	12-1	48-136
		12-2(c)	48-142
		12-8	48-177
		12-9	48-177
		12-16	48-177

		12-11	48-137
		12-12	48-138
		12-13	48-139
		12-14	48-140
		12-15	48-176
		12-17	48-178
		12-18	48-179
		12-19	48-180
		12-20	48-181
		12-21	48-191
		12-22	48-192
		12-23	48-193
		12-24	48-194
		12-25	48-195
		12-26	48-196
		12-27	48-198
		12-29	48-197
		12-29	48-211
		12-30	48-212
		12-31	48-213

		12-32	48-214
		12-33	48-215
		12-34	48-216
		12-36	48-217
		12-37	48-218
		12-38	48-219
		12-39	48-220
		12-40	48-221
		12-41(a)	48-143
		12-42	48-141
89-18	12-4-1989		42-1
90-02	5-7-1990	24-18	46-18
		24-23	46-23
90-03	7-2-1990	2	38-57
90-04	7-2-1990	24-25	46-55
90-06	11-19-1990	1	2-148
		2	2-148
		3	2-148
90-10	12-17-1990	1	2-289
		2	2-288

		3	2-290
		4	2-291
		5	2-326
		6	2-292
		7	2-327
		8	2-293
		9	2-358
		10	2-359
		11	2-294
		12	2-295
		13	2-296
91-10	10-21-1991	1	2-148
		2	2-148
		3	2-148
		4	2-148
91-13	11-18-1991		2-22
91-15	12-16-1991	4-48	8-126
			8-122
92-04	5-5-1992	1.0	10-467
92-11	7-20-1992	1.0	2-22

92-12	7-20-1992	2.0	18-166
92-14	9-9-1992		2-19
92-16	10-19-1992	2(a)	14-3
		2(b)	14-1
		2(c)	14-4
		3	14-2
		4	14-5
		5	14-7
		6	14-8
		7	14-9
		8	14-10
		9	14-11
92-20	12-14-1992	1.0	44-126
		1.0	44-162
		1.0	44-165
		2.0	44-128
93-03	5-3-1993	1	2-148
		2	2-148
		3	2-148
		4	2-148

93-05	5-3-1993	1	46-115
		2	46-115
		3	46-115
		4	46-115
		5	46-115
		6	46-115
93-06	5-17-1993	1	2-210
		2	2-211
		3	2-212
		4	2-213
		5	2-214
		6	2-215
93-04	6-7-1993	2	2-169
		3	2-170
		4	2-171
		5	2-172
		6	2-173
		7	2-174
		8	2-175
		9	2-176

		10	2-177
		11	2-178
93-07	6-7-1993	3	46-58
93-08	7-12-1993	3	46-303
		4	46-303
		5	46-303
		6	46-303
94-03	2-21-1994	2	42-77
		3	42-78
		4	42-79
94-06	4-4-1994	2.0	36-69
		3.0	36-98
94-09	5-16-1994	2.0	2-463
		3.0	2-464
		4	2-465
		5	2-466
		6	2-467
94-11	7-18-1994		2-150
94-16	10-3-1994		2-141
		1	2-148

		2	2-148
		3	2-148
94-22	11-7-1994		2-467
95-03	3-20-1995	1	2-22
		2	2-22
		3	2-22
		4	2-22
		5	2-22
		6	2-22
		7	2-22
		8	2-22
		9	2-22
96-03	2-19-1996	2	30-72—30-74
96-20	12-2-1996	2	46-23
		3	46-58
96-21	12-16-1996	2.0	22-139, 22-140
		3.0	22-141
97-03	2-17-1997	2.0	48-136
		3.0	48-137
		4.0	48-139

		5.0	48-140
		6.0	48-143
		8.0	48-177
		9.0	48-180
97-11	6-16-1997	2	6-21—6-33
		2	6-35—6-43
97-12	7-7-1997	1	4-58—4-60
98-04	2-2-1998	1	44-166
		2	44-166
		3	44-166
99-11	9-20-1999	2	38-199
		3	38-200
		4	38-201
		5	38-202
		6	38-203
		7	38-204
		8	38-205
		9	38-206
		10	38-207
99-34	11-15-1999	1	38-202

2000-03	2-21-2000	1	22-22
2000-07	4-3-2000	1	46-58
		2	46-58
		3	46-58
2000-04	6-17-2000	2	26-1, 26-2
		2	26-23—26-34
		2	26-57—26-69
2000-19	9-18-2000	1	46-55
2000-29	12-4-2000	2	38-159
		3	38-160
		4	38-161
		5	38-162
		6	38-163
		7	38-164
		8	38-165
		9	38-166
		10	38-167
		11	38-168
		12	38-169
		13	38-170

		14	38-171
		15	38-172
		16	38-173
		17	38-174
		18	38-175
		19	38-176
		20	38-177
		21	38-178
		22	38-179
		23	38-180
2000-30	1-2-2001	2	10-112—10-114
		2	10-142—10-152
		2	10-171—10-173
		2	10-211—10-214
		2	10-237, 10-238
		2	10-270, 10-271
		2	10-291—10-306
2001-17	12-17-2001	1	26-23
		2	26-23
2001-19	1-7-2002	2	40-1—40-3

		2	40-27—40-36
		2	40-61—40-80
		2	40-104—40-109
2001-20	1-7-2002	1	10-369—10-379
2001-24	1-7-2002	1	10-76
		2	10-77
2001-25	1-7-2002	1	10-48
		2	10-51
		3	10-51
2001-26	1-7-2002	1	10-357, 10-358
2002-05	3-18-2002	3	10-114
		4	10-173
		6	10-295
		7	10-296
2002-12	5-6-2002	2	34-1—34-10
		2	34-41—34-47
2002-14	5-20-2002	1	38-33
		2	38-34
2002-16	6-17-2002	1	48-140
		2	48-193

2002-20	9-3-2002	1	46-325—46-337
2003-02	3-17-2003	2(82-132)	46-144
		2(82-133)	46-145
		2(82-134)	46-146
		2(82-135)	46-147
		2(82-136)	46-148
		2(82-137)	46-149
		2(82-138)	46-150
		2(82-139)	46-151
		2(82-140)	46-152
		2(82-141)	46-153
		2(82-142)	46-154
		2(82-143)	46-155
		2(82-146)	46-156
		2(82-147)	46-157
		2(82-148)	46-158
		2(82-149)	46-159
		2(82-150)	46-160
		2(82-151)	46-161
		2(82-152)	46-162

		2(82-153)	46-163
		2(82-154)	46-164
		2(82-155)	46-165
		2(82-156)	46-166
		2(82-166)	46-186
		2(82-167)	46-187
		2(82-168)	46-188
		2(82-181)	46-215
		2(82-182)	46-216
		2(82-183)	46-217
		2(82-190)	46-243
		2(82-191)	46-244
		2(82-192)	46-245
2003-05	6-2-2003	2	48-82
2003-15	11-3-2003	1	2-239
2003-17	11-3-2003	1	22-52
		2	22-53
2004-02	5-17-2004	1	30-44—30-49
2004-10	11-15-2004	1	10-369
2004-11	12-6-2004	2	10-173

		2	10-211
		2	10-237
		2	10-270
2005-05	7-18-2005	1	40-66
2005-07	9-6-2005		14-6
2005-09	9-19-2005	1	2-152
2005-08	9-27-2005	1	2-151
2005-12	12-5-2005	1	40-2
		2	40-33
2005-13	12-19-2005	1(14-35)	10-21
		1(14-36)	10-22
2006-01	3-6-2006	3	20-25
		3	20-27, 20-28
		4	20-47, 20-48
		5	20-70—20-75
2006-10	10-16-2006	1	46-17
		2	46-19
2006-14	10-23-2006	1	40-65
2006-16	11-6-2006	1	42-21—42-26
2006-18	11-20-2006	1	34-8

		2	34-9
2007-05	4-16-2007	1(50-71)	30-44
		1(50-72)	30-45
		1(50-73)	30-46
		1(50-74)	30-47
		1(50-75)	30-48
		1(50-76)	30-49
2007-08	8-20-2007	1(78-220)	44-281
		1(78-221)	44-282
		1(78-222)	44-283
		1(78-223)	44-284
		1(78-224)	44-285
		1(78-225)	44-286
		1(78-226)	44-287
2007-13	11-5-2007	1(14-65)	10-76
		1(14-66)	10-77
		1(14-67)	10-78
		1(14-68)	10-79
		1(14-69)	10-80
		1(14-70)	10-81

		1(14-71)	10-82
		1(14-72)	10-83
		1(14-73)	10-84
		2	10-305
		3(14-325)	10-48
		3(14-328)	10-51
		4(14-405)	10-357
		4(14-406)	10-358
2007-16	11-5-2007		2-19
2007-07	11-19-2007	1(38-2)	10-391
		1(38-3)	10-392
		1(38-4)	10-393
		1(38-5)	10-394
		1(38-6)	10-395
		1(38-26)	10-419
		1(38-27)	10-420
		1(38-28)	10-421
		1(38-29)	10-422
		1(38-30)	10-423
		1(38-41)	10-445

		1(38-42)	10-446
		1(38-43)	10-447
		1(38-44)	10-448
		1(38-45)	10-449
2008-01	2-4-2008	2	50-1
		3	50-63
		4	50-64
		5	50-65
		6	50-66
		7	50-31
		8	50-32
		9	50-33
		10	50-34
		11	50-35
		12	50-36
		13	50-67
		14	50-68
		15	50-69
		16	50-70
		17	50-71

		20	50-72
		22	50-73
		24	50-74
		25	50-75
		27	50-76
		31	50-77, 50-78
		34	50-79
		36	50-80
		37	50-81
		38	50-82
		39	50-112
		40	50-113
		41	50-114
		42	50-115
		43	50-116
		44	50-117
		45	50-2
		46	50-3
		47	50-4
		48	50-37

		49	50-5
		50	50-6
		app. A	50-83
2008-02	2-18-2008	2(25-1)	12-19
		2(25-2)	12-20
		2(25-3)	12-21
		2(25-4)	12-22
		2(25-5)	12-23
		2(25-6)	12-24
2008-03	3-3-2008	1(34-71)	20-25
		1(34-71a)	20-26
		1(34-73)	20-27
		1(34-74)	20-28
		1(34-91)	20-47
		1(34-92)	20-48
2008-07	5-19-2008	2	34-1
		3	34-11
2008-16	7-21-2008		2-240
2008-23	9-2-2008	1(30-26)	18-25
		1(30-27)	18-26

		1(30-28)	18-27
		1(30-29)	18-28
		1(30-30)	18-29
		1(30-31)	18-30
		1(30-32)	18-32
		1(30-33)	18-33
		1(30-46)	18-53
		1(30-47)	18-54
		1(30-48)	18-55
		1(30-49)	18-56
		1(30-50)	18-57
		1(30-51)	18-58
		1(30-52)	18-59
		1(30-66)	18-77
		1(30-67)	18-78
		1(30-68)	18-79
		1(30-69)	18-80
		1(30-91)	18-104
		1(30-92)	18-105
		1(30-93)	18-106

		1(30-94)	18-107
		1(30-95)	18-108
		1(30-96)	18-109
		1(30-100)	18-132
2009-01	1-19-2009	1	18-192
		2(30-181)	18-186
		2(30-182)	18-187
		2(30-183)	18-188
		2(30-184)	18-189
		2(30-185)	18-190
		2(30-186)	18-191
		2(30-187)	18-193
		2(30-188)	18-194
		2(30-189)	18-195
		2(30-190)	18-196
2009-03	1-19-2009	2	44-285
2009-04	2-2-2009	1(74-75)	42-104
2009-12	6-1-2009	2(82-156)	46-166
2009-17	6-15-2009	1	42-80
2009-30	10-19-2009	1(38-50)	18-254

		1(38-51)	18-255
		1(38-52)	18-256
		1(38-53)	18-257
		1(38-54)	18-258
		1(38-55)	18-259
		1(38-56)	18-260
		1(38-57)	18-261
2009-31	11-2-2009	2	50-68
2010-03	3-1-2010	1	34-7
2010-04	4-5-2010	1	30-44—30-49
2010-09	5-3-2010	2	50-82
		3	50-116
		4	50-2
2010-12	6-21-2010	1(24-1)	28-1
		1(24-2)	28-2
		1(24-3)	28-3
		1(24-4)	28-4
		1(24-5)	28-5
		1(24-6)	28-6
		1(24-7)	28-7

		1(24-8)	28-8
		1(24-9)	28-9
		1(24-11)	28-10
		1(24-12)	28-11
		1(24-13)	28-12
		1(24-21)	28-34
		1(24-22)	28-51
		1(24-23)	28-52
		1(24-24)	28-53
2010-06	7-6-2010	2(26.1)	16-19
		2(26.2)	16-20
		2(26.3)	16-21
		2(26.4)	16-22
		2(26.10)	16-48
		2(26.11)	16-49
		2(26.12)	16-50
		2(26.13)	16-51
		2(26.14)	16-52
		2(26.15)	16-53
		2(26.16)	16-54

		2(26.17)	16-55
		2(26.18)	16-56
		2(26.19)	16-57
		2(26.20)	16-58
		2(26.21)	16-59
		2(26.30)	16-77
		2(26.31)	16-78
2010-19	9-7-2010	1	2-148
2010-16	10-4-2010	1(38-1)	10-390
		1(38-2)	10-391
		1(38-3)	10-392
		1(38-4)	10-393
		1(38-5)	10-394
		1(38-6)	10-395
		1(38-26)	10-419
		1(38-27)	10-420
		1(38-28)	10-421
		1(38-29)	10-422
		1(38-30)	10-423
		1(38-41)	10-445

		1(38-42)	10-446
		1(38-43)	10-447
		1(38-44)	10-448
		1(38-45)	10-449
2010-21	11-1-2010	2(74-32)	42-27
2010-24	12-6-2010	2(42-140)	22-166
		2(42-141)	22-167
		2(42-142)	22-168
2010-25	12-6-2010	1	44-67
2010-26	2-21-2011	2(15.1)	6-75
		2(15.2)	6-76
		2(15.3)	6-77
		2(15.4)	6-78
		2(15.5)	6-79
		2(15.6)	6-80
		2(15.7)	6-81
		2(15.8)	6-82
		2(15.9)	6-83
		2(15.10)	6-84
		2(15.11)	6-85

		2(15.12)	6-86
		2(15.13)	6-87
		2(15.14)	6-88
		2(15.15)	6-89
2011-01	3-21-2011	1(54-2)	32-2
		2(54-3)	32-3
		3(54-6)	32-5
		4(54-8(a))	32-7
		5(54-9)	32-8
		6(54-10)	32-9
		6(54-11)	32-10
		8(54-31(12))	32-41
		8(54-31(13))	32-41
		9(54-37)	32-47
		10(54-39)	32-49
		11(54-40)	32-50
		12(54-41)	32-51
		13(54-43)	32-53
2011-06	5-2-2011	2	50-79
2011-07	5-2-2011	1(2.32(c))	2-22

		2(2.32(d))	2-22
2011-08	5-2-2011	1	40-2
		2	40-3
		3	40-4
2011-10	7-5-2011	1	40-3
2011-14	7-26-2011	2	34-11
2011-16	7-26-2011	1	44-68
2011-17	8-15-2011	1	18-286
2012-01	2-20-2012	2	50-2
2012-02	2-20-2012	2	26-2
		3	26-60
2012-03	4-2-2012	1	18-166
2012-04	4-2-2012	2	2-294
2012-07	5-7-2012	2	34-9
2012-13	6-18-2012	1	18-166
2012-18	7-2-2012	2	50-82
2012-30	9-17-2012	2	50-116
2012-41	10-15-2012	2	18-26
		3	18-31
		4	18-32

		5	18-33
		6	18-53
		7	18-54
		8	18-55
		9	18-56
		10	18-57
		11	18-58
		12	18-77
		13	18-78
		14	18-79
		15	18-81—18-83
2012-42	10-15-2012	2	10-306
2012-20	11-5-2012	1(14-100)	10-112
		1(14-101)	10-113
		1(14-103)	10-114
		1(14-115)	10-142
		1(14-116)	10-143
		1(14-117)	10-144
		1(14-118)	10-145
		1(14-119)	10-146

		1(14-120)	10-147
		1(14-121)	10-148
		1(14-122)	10-149
		1(14-123)	10-150
		1(14-124)	10-151
		1(14-125)	10-152
		1(14-140)	10-171
		1(14-141)	10-172
		1(14-147)	10-173
		1(14-185)	10-211
		1(14-194)	10-213
		1(14-195)	10-214
		1(14-210)	10-237, 10-238
		1(14-230)	10-270
		1(14-234)	10-271
		1(14-245)	10-291
		1(14-246)	10-292
		1(14-247)	10-293
		1(14-251)	10-294
		1(14-252)	10-295

		1(14-253)	10-296
		1(14-254)	10-297
		1(14-255)	10-298
		1(14-261)	10-299
		1(14-262)	10-300
		1(14-263)	10-301
		1(14-264)	10-302
		1(14-269)	10-303
		1(14-272)	10-304
		1(14-284)	10-305
		1(14-293)	10-306
2012-22	11-5-2012	1(60-1)	34-1
		3(60-3)	34-3
		4(60-5(b))	34-5
		5(60-5)(c))	34-5
		6(60-7)	34-7
		7(60-8)	34-8
		8(60-9)	34-9
		9(60-12)	34-12
		10(60-13)	34-13

		11(60-14)	34-14
		12(60-29)	34-44
		13(60-30)	34-45
		14(60-33)	34-48
		15(60-33)	34-48
		16(60-34)	34-49
2012-47	11-19-2012	1(27-1)	16-100
		1(27-2)	16-101
		1(27-3)	16-102
		1(27-11)	16-133
		1(27-12)	16-134
		1(27-13)	16-135
		1(27-14)	16-136
		1(27-15)	16-137
		1(27-16)	16-138
		1(27-17)	16-139
		1(27-21)	16-162
		1(27-22)	16-163
		1(27-23)	16-164
		1(27-24)	16-165

		1(27-25)	16-166
		1(27-26)	16-167
		1(27-27)	16-168
		1(27-28)	16-169
		1(27-29)	16-170
		1(27-30)	16-171
		1(27-31)	16-172
2012-49	11-19-2012	2	10-306
2013-23	2-2-2013	2	50-82
2013-14	2-9-2013	2	50-116
2012-51	2-14-2013	2	50-115
2013-02	4-1-2013	2	30-44—30-49
2013-04	4-15-2013	1(42-139)	22-190
		1(42-140)	22-191
		1(42-141)	22-192
		1(42-142)	22-193
		1(42-143)	22-194
		1(42-144)	22-195
2013-08	8-5-2013	2.0	2-259
		3.0	2-260

		4.0	2-261
2013-10	8-19-2013	2.0	2-427
		3.0	2-428
		4.0	2-429
		5.0	2-430
		6.0	2-431
		7.0	2-432
2013-15	9-3-2013	2	50-79
2013-16	10-7-2013	2	46-332
		3	46-334
2013-19	11-4-2013	2	50-82
		3	50-2
2013-24	1-6-2014	2(60-1)	34-1
		2(60-5)	34-5
		2(60-7)	34-7
2014-02	1-6-2014	1	28-70
		2	28-71
		3	28-72
2014-04	2-3-2014	2(70-46)	40-76
2014-10	5-5-2014	1(14-35)	10-21

		1(14-36)	10-22
		1(14-185)	10-211
		2(14-65)	10-76
		2(14-66)	10-77
		3(14-147)	10-173
		3(14-193)	10-212
		3(14-210)	10-237
		3(14-230)	10-270
		3(14-272)	10-304
		3(14-284)	10-305
		4(14-325)	10-48
		4(14-328)	10-51
		5(14-405)	10-357
		5(14-406)	10-358
2014-11	5-5-2014	1(34-71)	20-25
		1(34-71)	20-28
		1(34-71a)	20-26
		1(34-73)	20-27
		1(34-91)	20-47
		1(34-92)	20-48

STATE LAW REFERENCE TABLE

This table shows the location within this Charter and Code, either in the text or notes following the text, of references to Texas state law.

Vernon's Ann. Civ. St. Article	Section this Code
5221f	50-2
6687-1	48-140
6701h	48-107

V.T.C.A. Agriculture Code Section	Section this Code
ch. 141 et seq.	Ch. 8 (note)
	Ch. 8, Art. III
ch. 201	Ch. 10, Art. VIII
	Ch. 18, Art. VI

V.T.C.A. Alcoholic Beverage Code Section	Section this Code
ch. 1 et seq.	Ch. 4 (note)
	4-23
1.04	4-1
tit. 3, ch. 32	50-2

ch. 11 et seq.	4-23
	48-36
11.09	4-25
11.38	Ch. 4 (note)
	4-24
ch. 61 et seq.	Ch. 4, Art. II
61.01	4-23, 4-24
61.03	4-25
61.36	Ch. 4 (note)
	4-24
109.31 et seq.	Ch. 4 (note)
109.33	4-2
251.01 et seq.	Ch. 4 (note)

V.T.C.A. Business and Commerce Code Section	Section this Code
ch. 17, subch. E	32-7
ch. 601	32-9
601.052	32-9
601.053	32-9

V.T.C.A. Civil Practice and Remedies Code Section	Section this Code
6.002	Char. § 3.08
63.001 et seq.	Char. § 3.07
ch. 101 et seq.	Char. § 4.04
ch. 101	6-1
ch. 102	2-171, 2-172
102.003	2-172

V.T.C.A. Code of Criminal Procedure Article	Section this Code
18.20	Ch. 48, Art. III
45.023	44-34
45.052	28-71
45.053	28-72
102.017	28-34
102.0172	28-51
102.0174	28-70
103.0031	2-240

V.T.C.A. Education Code Section	Section this Code
25.085	30-45
38.006	Ch. 30, Art. II, Div. 3

V.T.C.A. Election Code Section	Section this Code
ch. 1 et seq.	Char. Art. V
	Char. § 5.02
	Ch. 12 (note)
ch. 2	Char. § 5.05
ch. 11 et seq.	Char. § 5.06
41.001	Char. § 6.09
ch. 52	Char. § 5.04
67.003	Char. § 5.07
85.001	34-1
85.036	34-1
141.003	Char. § 6.03
ch. 251 et seq.	Ch. 12, Art. II
251.011	2-214

251.012	2-214

V.T.C.A. Family Code Section	Section this Code
ch. 31	30-47
51.08	30-49

V.T.C.A. Finance Code Section	Section this Code
ch. 1 et seq.	Ch. 2, Art. IV
ch. 302	46-155
	46-159

V.T.C.A. Government Code Section	Section this Code
ch. 21 et seq.	Ch. 28 (note)
ch. 29	Char. § 7.08
	Ch. 28 (note)
311.005	1-2
311.014	1-2

ch. 414	20-94
ch. 418	Ch. 10, Art. VIII
	Ch. 14 (note)
	14-2
	Ch. 18, Art. VI
418.023	Ch. 48, Art. III
418.103	Ch. 14 (note)
ch. 551	42-27
	50-32
551.001 et seq.	Char. § 6.12
	2-22
551.042	2-22
553.02	2-214
ch. 573	Char. § 6.05
573.041	2-214
ch. 574	Char. § 6.06
ch. 615	24-54
ch. 803	2-150
ch. 851 et seq.	Ch. 2, Art. III, Div. 3
851.001 et seq.	2-137

853.305	2-150
853.401—853.404	2-148
853.504	2-149
853.505	2-149
855.401 et seq.	2-142
ch. 1501 et seq.	Char. § 8.23

V.T.C.A. Health and Safety Code Section	Section this Code
ch. 1 et seq.	Char. § 7.09
	Ch. 22 (note)
161.081 et seq.	Ch. 30, Art. II, Div. 3
chs. 241, 242	6-22
ch. 247	50-2
ch. 262	Ch. 22, Art. II
	22-19
	22-24
262.012	22-22
ch. 341 et seq.	Ch. 18 (note)
ch. 341	Ch. 22, Art. III

	22-52, 22-53
chs. 341, 342	Ch. 36 (note)
ch. 361	Ch. 36 (note)
ch. 363	Ch. 36 (note)
ch. 365	Ch. 36 (note)
	36-2
ch. 382	Ch. 22, Art. IV, Ch. 22, Art. V
ch. 431	Ch. 22, Art. III
	22-52, 22-53
ch. 437	Ch. 22, Art. III
	22-52, 22-53
ch. 438	Ch. 22, Art. III
ch. 751 et seq.	Ch. 20
756.021 et seq.	38-98
ch. 773	Ch. 16, Art. III
	16-137
773.050	16-133
	16-135
ch. 821 et seq.	Ch. 8 (note)
ch. 826	8-24

	8-26
	8-103, 8-104
826.001—826.055	8-23
826.031 et seq.	Ch. 8, Art. II

V.T.C.A. Human Resources Code Section	Section this Code
ch. 42	50-2
ch. 123	50-2
42.041 et seq.	6-22

V.T.C.A. Local Government Code Section	Section this Code
ch. 5 et seq.	Ch. 2 (note)
9.001 et seq.	Char. (note)
9.002	Char. § 3.02
9.003	Char. § 3.02
9.004 et seq.	Char. § 3.02
ch. 26	Ch. 2 (note)
26.001 et seq.	Char. Art. VI

26.021	Char. § 2.01
41.001 et seq.	Char. § 2.02
ch. 42	Char. § 10.02
	48-139
ch. 43	Char. § 10.02
	50-66
43.001	46-146
43.001 et seq.	Char. § 2.03
43.002	50-31
	50-37
43.141 et seq.	Char. § 2.04
51.001 et seq.	Char. Art. IV
51.032	1-9
51.072	Char. Art. IV
52.013	Char. § 6.14
53.001 et seq.	1-1
54.001	1-14
ch. 101 et seq.	Char. Art. VIII
	Ch. 2, Art. IV
	Ch. 42 (note)

101.022	Char. § 8.01
101.023	Char. § 3.07
ch. 102	Char. § 8.03
102.006	Char. § 8.07
102.007	Char. § 8.09
	Char. § 8.10
102.008	Char. § 8.11
102.009	Char. § 8.13
	Char. § 8.14
	Char. § 8.15
102.010	Char. § 8.12
103.001 et seq.	Char. § 8.24
105.074	Char. § 8.17
105.075	Char. § 8.17
105.076	Char. § 8.17
ch. 141 et seq.	Ch. 2, Art. III
ch. 171	Char. § 6.07
	2-20
	2-214
	50-32

171.002(c)	2-214
171.003	2-214
ch. 201	Ch. 2, Art. V
	2-291
201.001 et seq.	Char. § 3.05
	Char. § 8.02
203.026	Ch. 2, Art. V
ch. 211 et seq.	Ch. 10 (note)
	Ch. 50 (note)
ch. 211	50-1
	50-32
	50-34
	50-37
211.006	50-34
211.007	50-34
211.008—211.011	50-33
211.011	50-33
	50-37
ch. 212	Char. § 10.02
	Char. § 10.03

	Ch. 40 (note)
	50-2
	50-32
212.003	Char. § 10.02
212.005	Ch. 40, Art. II
212.006	Ch. 40, Art. II
212.007	Ch. 40, Art. II
212.010	Ch. 40, Art. III
212.0145	40-2
212.016	40-2
ch. 214	Char. § 7.11
214.131 et seq.	40-72
214.191 et seq.	Ch. 16, Art. II
214.212	10-48
214.214	Ch. 10, Art. V
214.216	10-21
215.031	Ch. 32 (note)
215.073	Ch. 48 (note)
	Ch. 48, Art. II, Div. 2
217.003	30-1

217.042	Ch. 18, Art. III
ch. 242	Char. § 10.02
ch. 243	Ch. 6, Art. II
	6-21
ch. 245	50-37
245.001—245.006	50-31
245.001(3)	50-37
245.002(a)	50-37
245.003	50-37
245.005	50-37
251.001 et seq.	Char. Art. IV
	Char. § 4.03
252.021 et seq.	Char. § 8.16
252.022	Char. § 8.16
252.023	Char. § 8.16
253.005	Ch. 18, Art. II
ch. 281 et seq.	Ch. 38 (note)
ch. 283	Ch. 38, Art. VII
ch. 306 et seq.	Ch. 38 (note)
ch. 341 et seq.	Ch. 20 (note)

ch. 341	Char. § 7.03
	Ch. 24 (note)
341.011	24-55
341.905	Ch. 30, Art. II, Div. 2
ch. 342	Char. § 7.06
351.903	Ch. 30, Art. II, Div. 2
ch. 362	Ch. 24 (note)
ch. 371 et seq.	Char. Art. X
	Ch. 50 (note)
ch. 395	46-145
	46-148—46-151
	46-153
	46-160, 46-161
	46-166
	46-187
	46-216
	46-244
395.001 et seq.	46-146
ch. 401 et seq.	Char. Art. IX

	Char. § 7.10
	Ch. 46 (note)
401.006	Ch. 46, Art. VII
411.002	Ch. 10, Art. VIII
	Ch. 18, Art. VI
411.003	Ch. 10, Art. VIII
	Ch. 18, Art. VI
ch. 501 et seq.	42-77
551.006	Ch. 46, Art. VII

V.T.C.A. Natural Resources Code Section	Section this Code
ch. 1 et seq.	Ch. 18 (note)
ch. 52	Ch. 18, Art. II
ch. 81 et seq.	Ch. 18, Art. II
92.007	Ch. 18, Art. II

V.T.C.A. Occupations Code Section	Section this Code
ch. 1201	Ch. 26 (note)

ch. 1301	10-333
ch. 1701	Ch. 24 (note)
ch. 1801 et seq.	Ch. 32 (note)
ch. 2001	Ch. 42, Art. III
	42-58
ch. 2302	Ch. 48, Art. III
ch. 2303	Ch. 48, Art. III
	48-139
	48-221
1201.003	50-2
2001.503	42-59

V.T.C.A. Parks and Wildlife Code Section	Section this Code
ch. 1 et seq.	Ch. 18 (note)

V.T.C.A. Penal Code Section	Section this Code
ch. 1 et seq.	Char. § 7.03
	Ch. 24 (note)

	Ch. 30 (note)
7.02	48-33
ch. 12	1-14
15.01	32-3
16.02	Ch. 48, Art. III
ch. 21	6-25
21.01	6-31
ch. 22	6-25
ch. 25	6-25
28.02	20-94
28.03	46-14
30.05	32-3
	46-14
31.03	Ch. 48, Art. III
31.04	48-29
36.02	2-214
36.08(e)	2-214
36.10	2-214
37.10	2-214
	16-78

37.11	2-214
39.01	2-214
39.02	2-214
39.03	2-214
42.01(c)	Ch. 18, Art. IV
42.05	2-214
ch. 43	6-25
43.03	48-34
48.01	Ch. 22, Art. IV, Ch. 22, Art. V
49.031	48-35

V.T.C.A. Property Code Section	Section this Code
12.002	Char. § 10.02
21.001 et seq.	Char. Art. IV
	Char. § 4.03

V.T.C.A. Tax Code Section	Section this Code
ch. 1 et seq.	Ch. 42 (note)

1.05	Char. § 8.01
11.18	42-104
11.184	42-104
26.14	Char. § 2.03
ch. 156	Ch. 42, Art. II
156.001(1)	42-21
ch. 321	Ch. 42, Art. IV
321.210	42-80
ch. 351	Ch. 42, Art. II
	42-27

V.T.C.A. Transportation Code Section	Section this Code
ch. 1 et seq.	Char. § 7.03
	Ch. 24 (note)
	Ch. 44 (note)
ch. 91	Ch. 44, Art. VII
ch. 171	Ch. 44, Art. VII
ch. 396	Ch. 48, Art. III
ch. 501	18-216

ch. 521 et seq.	48-81
541.201	44-68
541.304	44-281
542.202(a)(2)	Ch. 44, Art. V
542.202(a)(3)	Ch. 44, Art. VI
542.202(a)(7)	44-104
542.202(a)(10)	44-99
ch. 544	Ch. 44, Art. IV
544.001	44-96
544.007(d)	44-282
	44-287
545.305	44-128
545.356	44-62
545.418	48-37
545.424	44-67
545.425	44-67
ch. 550	Ch. 48, Art. III
622.012	44-106
622.014	44-106
ch. 643	Ch. 48, Art. III

643.201	Ch. 48, Art. III
ch. 683	Ch. 18, Art. V
683.012	18-228
683.071	18-216
683.072	18-220
683.077	18-217

V.T.C.A. Utilities Code Section	Section this Code
ch. 1 et seq.	Ch. 46 (note)
54.204—54.206	38-204

V.T.C.A. Water Code Section	Section this Code
ch. 11	46-55
16.311 et seq.	Ch. 10, Art. VIII
	Ch. 18, Art. VI
16.313	10-394
16.315	10-390
16.318	Ch. 10, Art. VIII

	Ch. 18, Art. VI