ORDINANCE NO. 2012-_____

AN ORDINANCE OF THE CITY OF FULSHEAR, TEXAS, PROVIDING RULES AND REGULATIONS OF LAND USE, STRUCTURES, BUSINESSES, AND RELATED ACTIVITIES WITHIN THE TERRITORIAL LIMITS OF THE CITY OF FULSHEAR, TEXAS, PROVIDING FOR PROVIDING A PENALTY; AND PROVIDING FOR SEVERABILITY.

WHEREAS, the City of Fulshear, Texas ("City"), is authorized by Chapter 211 of the Texas Local Government to promulgate rules and regulations governing regulation of land use, structures, businesses and related activities; and

WHEREAS, the City Council of the City of Fulshear, Texas, finds that the rules and regulations governing land use, structures, businesses, and related activities within the territorial limits of the City and the City's extraterritorial jurisdiction promotes the health, safety, morals, and general welfare of the City; and

WHEREAS, the City Council of the City of Fulshear, Texas, further finds that the rules and regulations governing land use, structures, businesses, and related activities within the territorial limits of the City and the City's extraterritorial jurisdiction promotes the safe, orderly, and healthful development of the City; and

WHEREAS, the City Council of the City of Fulshear, Texas, held a Public Hearing prior to the adoption of this Ordinance, in which any person desiring to comment on this Ordinance was allowed to speak and the City Council considered all comments;

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

Section 1-01. The facts and recitations contained in the preamble to this Ordinance are hereby found to be true and correct and incorporated herein for all purposes.

Section 1-02. This Ordinance shall apply to all plats and all Subdivisions of land within the territorial limits of the City and the City's Extraterritorial Jurisdiction except where specifically exempted herein.

Fulshear, Texas, Code of Ordinances
Chapter 1 - ZONING [1]
ARTICLE I. - IN GENERAL
ARTICLE II. - DEFINITIONS AND INTERPRETATIONS
ARTICLE III. - DISTRICT REGULATIONS
ARTICLE IV. - SPECIAL USE REGULATIONS
ARTICLE V. - ADMINISTRATION AND PROCEDURES
ARTICLE VI. - NONCONFORMITIES
ARTICLE VII. - ENFORCEMENT

FOOTNOTE(S):
(1) ***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. 1-1. - Title.
Sec. 1-2. - Authority.
Sec. 1-3. - Applicability.
Sec. 1-4. - Purpose.
Sec. 1-5. - Minimum standards; conflict with private restrictions.
Sec. 1-6. - Inconsistent provisions and conflict with other regulations.
Sec. 1-7. - Zoning map.
Sec. 1-8. - Compliance with Zoning District standards.
Sec. 1-9. - Zoning classification of annexed areas.
Sec. 1-10. - Transitional provisions.
Sec. 1-11. - Severability.
Sections. 1-12—1-40. - Reserved.

Sec. 1-1. - Title.

This Ordinance shall be known and may be cited as the "Zoning Ordinance of the City of Fulshear, Texas" or simply as the "Zoning Ordinance."

Sec. 1-2. - Authority.

The Zoning Ordinance is adopted pursuant to the powers granted and limitations imposed by the Constitution and laws of the State and other provisions of Texas statutory and Common Law that are relevant and appropriate.

Sec. 1-3. - Applicability.

The provisions of this Ordinance shall apply to the development of all land within the City, unless specifically provided otherwise in this Ordinance.

Sec. 1-4. - Purpose.

The Zoning Ordinance is adopted for the purposes of promoting the public health, safety and general welfare of the citizens of the City. It is adopted in accordance with, and is intended to implement, the City's comprehensive plan, as adopted in _____. More specifically, this Ordinance is intended to do one or more of the following:

1. Guide the future growth and development of the City, to achieve orderly urban development through land use controls, to enhance the special characteristics and small town character of the City and to create a unique sense of place in concert with the City's other regulations and Ordinances;
2. To protect and conserve the value of land throughout the City and the value of buildings upon the land, and to minimize the conflicts among various uses of land and buildings;
3. Preserve and enhance the City's natural environment and avoid natural and manmade hazards in the development of the City;
4. Balance the protection of community resources with the need to promote economic development and protect individual property rights; and

5. Establish a process that effectively and fairly applies the regulations and standards of this Ordinance.

Sec. 1-5. - Minimum standards; conflict with private restrictions.

The provisions of this Ordinance are the minimum standards necessary to accomplish its stated purposes.

It is not the intent of this Ordinance to interfere with, abrogate or annul any private easement, covenant, deed restriction or other agreement between private parties. When the provisions of this Ordinance impose a greater restriction than imposed by such private agreements, the provisions of this Ordinance shall control. When private agreements impose a greater restriction than imposed by this Ordinance, such private agreements shall control.

Sec. 1-6. - Inconsistent provisions and conflict with other regulations.

In the event that the provisions of this Ordinance are inconsistent with one another or when the regulations of this Ordinance conflict with other adopted Ordinances or regulations of the City, the more restrictive provisions shall control, unless otherwise specifically stated.

Sec. 1-7. - Zoning map.

The boundaries of the Zoning Districts established by this Ordinance shall be shown on a map or series of maps entitled "Official Zoning Map," an up-to-date copy of which shall be maintained in the office of the City Secretary. Original copies of the official Zoning map and all amendments thereto shall be maintained in the City secretary's office. In case of any dispute regarding the Zoning classification of property subject to this Code, the original copy maintained by the City Secretary shall control.

Sec. 1-8. - Compliance with Zoning District standards.

No building or structure shall be erected, converted, enlarged, reconstructed or altered for use, nor shall any building, structure or land be used or changed in such a way that it does not comply with all of the District regulations established by this Ordinance for the District in which the building or structure or land is located.

Sec. 1-9. - Zoning classification of annexed areas.

Any land which comes under the Zoning jurisdiction of the City by reason of its annexation into the City shall be temporarily classified into Residential Acreage (R1) Zoning District until permanent zoning is established by the City Council. The procedure for establishing permanent zoning on annexed territory shall conform to the procedure established by law for the adoption of original zoning regulations.

Sec. 1-10. - Transitional provisions.

(a) *Building permits.* Except as specifically provided, the provisions of this Ordinance shall not affect any building permit or any valid building permit application filed prior to _____, provided that construction pursuant to such permit, if and when issued, is commenced within twenty four (24) months of the date of issuance of the permit and diligently pursued to completion.

(b) *Subdivision plats.* Except as specifically provided, the provisions of this Ordinance shall not affect any preliminary plat or final plat approved pursuant to the regulations of Ordinance Nos. 2004-913, 2005-918, 2008-966 and 2011-1059; Subdivision Regulations.

Sec. 1-11. - Severability.

In the event any clause, phrase, provision, sentence or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Fulshear, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

Sections. 1-12—1-40. - Reserved.

ARTICLE II. - DEFINITIONS AND INTERPRETATIONS

DIVISION 1. - RULES OF CONSTRUCTION
DIVISION 2. - DEFINITIONS
DIVISION 3. - INTERPRETATION OF ZONING DISTRICT BOUNDARIES
DIVISION 4. - INTERPRETATIONS OF ZONING ORDINANCE TEXT

DIVISION 1. - RULES OF CONSTRUCTION

Sec. 1-41. - Meanings and intent.
Sec. 1-42. - Difference of meaning between text and figures, illustrations.
Sec. 1-43. - Computation of time.
Sec. 1-44. - Delegation of authority.
Sec. 1-45. - Technical and nontechnical terms.
Sec. 1-46. - Public officials, bodies and agencies.
Sec. 1-47. - Mandatory and discretionary terms.
Sec. 1-48. - Conjunctions.
Sec. 1-49. - Tense, numbers and gender.
Sections. 1-50—1-71. - Reserved.

Sec. 1-41. - Meanings and intent.

All provisions, terms, phrases, and expressions contained in this Ordinance shall be constructed in accordance with the Ordinance's stated purposes.

Sec. 1-42. - Difference of meaning between text and figures, illustrations.

In cases of any difference of meaning or implication between the text of this Ordinance and any drawing, figure, or illustration, the text shall control.

Sec. 1-43. - Computation of time.

The time period within which an act is to be carried out shall be computed by excluding the first day and including the last day. If the last day is a Saturday, Sunday, or legal holiday, that day shall be excluded and the next business day shall count. In the computation of time for a Public Hearing

notice, both the first day (day of the advertisement) and the last day (day of the hearing) shall be excluded. Time-related terms shall have the meanings ascribed below:

1. The term "day" means a calendar day unless a business day is specified;
2. The term "week" means seven (7) calendar days;
3. The term "month" means a calendar month; and
4. The term "year" means a calendar year, unless a fiscal year is indicated.

Sec. 1-44. - Delegation of authority.

Whenever a provision appears requiring an officer or employee to perform an act or duty, it shall be construed as authorizing that officer or employee to delegate responsibility for performing the required act to other City employees, unless the provision specifies otherwise.

Sec. 1-45. - Technical and nontechnical terms.

Terms and phrases shall be construed according to the common and approved usage of the language, but technical terms and phrases that may have acquired a specific meaning in law shall be construed and understood according to such meaning.

Sec. 1-46. - Public officials, bodies and agencies.

All public officials, bodies and agencies to which reference is made are those of the City, unless otherwise indicated.

Sec. 1-47. - Mandatory and discretionary terms.

The term "shall" is always mandatory. The term "may" is permissive.

Sec. 1-48. - Conjunctions.

Unless the context clearly indicates the contrary, conjunctions shall be interpreted as follows:

(1) The term "and" indicates that all items, conditions, provisions or events are connected; and

(2) The term "or" indicates that one or more of the connected items, conditions, provisions or events shall apply.

Sec. 1-49. - Tense, numbers and gender.

Terms used in the past or present tense include the future as well as the past and present tense, unless the context clearly indicates the contrary. The singular shall include the plural and the plural shall include the singular, as the context suggests. Terms of one gender shall apply to persons regardless of gender.

Sections. 1-50—1-71. - Reserved.

DIVISION 2. - DEFINITIONS

Sec. 1-72. - Defined terms.
Sec. 1-73. - Purpose and scope.
Secs. 1-74—1-104. - Reserved.

Sec. 1-72. - Defined terms.

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

Accessory use* or *accessory structure means a use or structure that is subordinate to and serves a principal use or structure; is subordinate in area, extent and purpose to the principal use or structure served; contributes to the comfort, convenience and necessity of occupants of the principal use or structure served; and is located on the same lot as the principal use or structure served.

Agriculture means the use of land or buildings for agricultural uses such as farming; dairying; pasturage agriculture; horticulture; floriculture; viticulture; and animal and poultry husbandry, except for agricultural uses that produce noxious odors, including the raising of hogs, pigs, or other livestock fed from garbage or offal; and the necessary accessory uses for packing, treating or storing the produce; provided, however, that the operation of any such accessory uses shall be secondary to that of normal agricultural activities.

Arterial Street means those streets designated as arterial or future arterial on the City's major thoroughfare plan, included as part of Comprehensive Plan ____, or constructed as such in accordance with Ordinance Nos. 2004-913, 2005-918, 2008-966 and 2011-1059; Subdivision Regulations.

Automobile sales means the use of land or buildings for display and retail sales of new or used automobiles generally, which may include light trucks or vans, trailers, or recreation vehicles, and including any vehicle preparation or repair work conducted as an accessory use.

Automobile wrecking yard means the use of land or buildings for the dismantling or wrecking of used motor vehicles or trailers, or the storage, sale, or dumping of dismantled or wrecked vehicles or their parts. The presence on any lot of three (3) or more motor vehicles which, for a period exceeding thirty (30) days, have not been capable of operating under their own power and from which parts have been or are to be removed for reuse or sale, shall constitute prima facie evidence of an automobile wrecking yard.

Buffer strip means open spaces, landscaped areas, fences, walls, berms, or any combination thereof used to physically separate or screen one use or property from another so as to visually shield or block noise, lights, or other nuisances.

Clear view triangle means a triangle clear of all obstructions to viewing including, but not limited to, fences, landscaping, and other natural or manmade objects to allow people to see oncoming traffic.

Collector Street means those streets designated as collector on the City's major thoroughfare plan, included as part of Comprehensive Plan ___, or constructed as such in accordance with Ordinances Ordinance Nos. 2004-913, 2005-918, 2008-966 and 2011-1059, Subdivision regulations.

Commercial means an occupation, employment, or enterprise that is carried on for profit by the owner, lessee, or licensee.

Convenience retail means an establishment offering for retail sale prepackaged food products, household items and other goods commonly associated with the same, and having a gross floor area of less than five thousand (5,000) square feet.

Day care center means an establishment providing nonmedical care, protection and supervision for individuals on a regular basis, away from their primary residence for less than twenty four (24) hours per day. The term includes nursery schools, preschools and day care centers for adults and children.

Density means the number of dwelling units for each acre of land, calculated by dividing the total number of dwelling units in a development by the total acreage of the area of the development (including all lots, streets, easements, open space, water areas and lands with environmental constraints).

Dwelling means a building or portion of a building that is arranged, occupied or intended to be occupied as living quarters by one (1) family and includes facilities for sleeping, cooking and sanitation.

Dwelling, Multi-Family, means all dwellings which share a common wall between units (e.g., townhomes, condominiums, apartments, etc).

Dwelling, single-family detached, means all dwellings which are freestanding, on their own platted lots, and do not share any physical connection with another building.

Eating and drinking place means an establishment where the principal business is the sale of food or beverages in a ready-to-consume State. Typical uses include restaurants and other similar uses. This definition does not include an establishment that derives seventy five percent (75%) or more of the establishment's gross revenue from the on-premise sale of alcoholic beverages.

Family means any number of individuals, related by blood, marriage, or adoption, and domestic servants for such a family, or a group of not more than four (4) persons who are not so related, living together as a single nonprofit housekeeping unit doing their own cooking.

Group homes means a licensed community home as defined by Ch. 123 of the Texas Human Resources Code and must have not more than six (6) persons with disabilities as and two supervisors residing in the home at the same time. The limitation on the number persons with disabilities applies regardless of the legal relationship of those persons to one another. The home may not be established within one-half (1/2) mile of an existing group home. The term group home shall not include alcoholism or drug treatment center, work release facilities for convicts or ex-convicts, or other housing facilities serving as an alternative to incarceration. To qualify as a group home, an entity must provide the following services to persons with disabilities who reside in the home: 1. Food and shelter, 2. Personal guidance, 3. Care, 4. Habitation services, 5. Supervision.

Height, building, means the vertical distance between the average finished grade along the front of a building and the:

(1) Highest point of the coping of a flat roof;

(2) Deck of a mansard roof; or

(3) Ridge line of a gable, hip or gambrel roof.

Home occupation means any activity carried out for gain by a resident and conducted as a customary, incidental, and accessory use in the resident's dwelling.

Hospital means an institution that is licensed by the State or operated by an agency of the government to provide medical, surgical, psychiatric or emergency medical services to sick or

injured persons, primarily on an in-patient basis. The term "hospital" shall not include nursing homes.

Industry, heavy, means an establishment engaged in the basic processing and manufacturing of products predominantly from extracted or raw materials; or the bulk storage and handling of such products and materials; or a use engaged in the storage of, or manufacturing processes involving, flammable or explosive materials; or storage or manufacturing processes that involve potentially hazardous materials or materials commonly recognized as offensive.

Industry, light, means an establishment engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products, but excluding basic Industrial processing.

Library means a publicly operated facility housing a collection of books, magazines, audiotapes and videotapes, or other material for use by the general public.

Local Street means those streets designated as local on the City's major thoroughfare plan, included as part of Comprehensive Plan ____, or any other streets that are not designated as arterial, collector, Interstate highway, or private on the plan, or any street constructed as such in accordance with Ordinance Nos. 2004-913, 2005-918, 2008-966 and 2011-1059, Subdivision regulations.

Lot means a parcel of land that is, or is intended to be, separately owned, developed and otherwise used as a unit.

Lot area means the total horizontal area within the lot lines of a lot.

Lot line means a line dividing one lot from another lot or from a street or alley.

Major Thoroughfare means those streets designated as arterials and collectors on the City's major thoroughfare plan, included as part of Comprehensive Plan _____, or constructed as such in accordance with Ordinances Ordinance Nos. 2004-913, 2005-918, 2008-966 and 2011-1059, Subdivision regulations.

Manufactured Home means a factory-built, single-family dwelling manufactured on or after June 15, 1976, according to the rules of the U.S. Department of Housing and Urban Development, transportable in one or more sections which, in the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length or, when erected on site, is three hundred twenty (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 the plumbing, heating, air conditioning, and electrical systems. The term does not include a recreational vehicle as defined in this section.

Mobile home means a factory-built, single-family dwelling manufactured before June 15, 1976, transportable in one or more sections which, in the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length or, when erected on site, is three hundred twenty (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 the plumbing, heating, air conditioning, and electrical systems. The term does not include a recreational vehicle as defined in this section.

Nonconforming structure means buildings and structures constructed prior to (date Ordinance takes effect) that do not comply with the standards of the Zoning District in which such buildings or structures are located.

Nonconforming use means uses that were established prior to (date Ordinance takes effect) that do not conform to the use regulations of the Zoning District in which such uses are located.

Nonresidential means any use other than single-family detached, single-family attached, duplex, or Multi-Family dwelling.

Nursing home means an institution that is licensed by the State to provide in-patient services for persons needing regular medical attention and bed care services on a twenty four hour (24) basis, but excluding hospitals.

Office means an establishment providing executive, management, government, administrative or professional services, including out-patient medical services.

Park and recreation means a tract of land maintained by the federal, State or local government for the recreation and enjoyment of the general public.

Place of worship means a church or the use of land or buildings for regular assembly of people for worship and intended primarily for propagating a particular faith or religious belief.

Planned Unit Development* or *PUD means a contiguous area to be developed as a single entity according to a unified site design plan, containing one (1) or more of the following uses:

(1) Residential;

(2) Office;

(3) Commercial;

(4) Industrial;

(5) Public or quasi-public; or

(6) Any combination of the same.

Public house means an establishment that derives seventy five percent (75%) or more of the establishment's gross revenue from the on-premise sale of alcoholic beverages. Also known as a bar.

Principal use* or *principal structure means a use or structure that is the primary and chief purpose for the use of land or buildings on a lot.

Private Street means a street or road located on land which is not in public ownership, but which may be open for public access.

Recreational Vehicle means a vehicular-type portable structure without a permanent foundation that can be towed, hauled or driven, is primarily designed as a temporary living accommodation for recreational, camping and travel use and includes, but is not limited to, travel trailers, truck campers, camping trailers and self-propelled motor homes.

Recreational Vehicle Park means any lot of land upon which one (1) or more recreational vehicles are located, established, or maintained for occupancy as temporary living quarters.

Retail means an establishment engaged in the sale or rental of goods, merchandise or services, but excluding eating and drinking places. (See also *Convenience retail.*)

Safety Services means a facility for conduct of public safety and emergency services, including fire and police protection services and emergency medical and ambulance services.

School means the use of a site for instructional purposes on an elementary or secondary level, approved under the regulations of the State.

Screening means walls, fences, vegetation or landscaped earth berms maintained for the purpose of concealing from view the area behind such fences, vegetation or berms.

Setback means the distance between a building or structure and a property or lot line which establishes an area in which no part of the building or structure shall encroach or otherwise be constructed.

Sexually Oriented Business means an establishment consisting of, including, or having the characteristics of, but not limited to, any or all of the following:

(1) Adult Cabaret. An establishment devoted to adult entertainment presenting materials distinguished or characterized by their emphasis on matters depicting, describing, or relating to sexual activities or anatomical genital areas or that features topless dancers, go-go dancers, strippers, male or female impersonators, or similar entertainers for observation by patrons.

(2) Adult Motion Picture Theater. An enclosed building or outdoor facility used for presenting motion pictures depicting, describing, or relating to sexual activities or anatomical genital areas.

(3) Adult Store. An establishment having as a substantial or significant portion of its stock in trade books, magazines, publications, tapes, or films that are distinguished or characterized by their emphasis on matters depicting, describing, or relating to sexual activities or anatomical genital areas, or instruments, devices, or paraphernalia which are designed for use in connection with sexual activities.

Single-family residence means a structure that is detached from other structures or units that is designed primarily for the use of one (1) family and has a kitchen and a bathroom and sleeping areas.

Smoking Paraphernalia Establishment means a retail store where more than fifteen percent (15%) of the gross square footage of the establishment is dedicated to the sale, distribution, delivery, furnishing of smoking paraphernalia, from one person to another. Smoking paraphernalia shall mean paraphernalia, devices, or instruments that are designed or manufactured for the smoking, ingesting, inhaling or otherwise introducing into the body of tobacco, products prepared from tobacco, or controlled substances as defined in the Texas Health and Safety Code Chapter 481. Smoking paraphernalia includes, but is not limited to, pipes, bongs, and hookahs. Smoking paraphernalia also includes kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting any species of plant which is a controlled substance, or from which a controlled substance can be derived or in manufacturing, compounding, converting, producing, processing or preparing a controlled substance. Smoking paraphernalia does not include lighters, matches, cigarette holders and device used to store or preserve tobacco, tobacco

cigarettes, cigarette papers or cigars. For purposes of this definition, smoking paraphernalia establishments may also be referred to as head shops.

Special use means a use or structure which does not specifically, or without special restriction, conform to the regulation of the Zoning District in which it is located, but which if controlled as to number, area, location or relation to the neighborhood is deemed to promote the health, safety or general welfare of the residents of the City, and for which a special use exception or condition has been recommended by the Planning and Zoning Commission and approved by the City Council in accordance with the Special Use Permit allowed under this Ordinance. Such conditions shall include, but not be limited to, site plan review, general plan submission, restrictive deed covenants and regulations, additional landscaping, and other conditions as appropriate and determined by the Planning and Zoning Commission and/or the City Council.

Subdivider means any person or any agent dividing or proposing to divide land so as to constitute a subdivision. In any event, the term "subdivider" shall be restricted to include only the owner of land sought to be subdivided.

Use by Right means a use or activity that qualifies under the section will be allowed as a matter of right in that zoning district, subject to all other applicable Zoning standards in the Ordinance and City Code requirements.

Sec. 1-73. - Purpose and scope.

For the purposes of interpreting and administering the provisions of this Ordinance, the terms defined in this division shall be given the meanings set forth in section 1-72. All other terms shall be given their common, ordinary meanings, as the context may reasonably suggest. In case of dispute over the meaning of a term not defined here or over the application of a definition set forth here, the City Administrator shall give an interpretation in accordance with sections 1-127 and 1-277(c).

Sections. 1-74—1-104. - Reserved.

DIVISION 3. - INTERPRETATION OF ZONING DISTRICT BOUNDARIES

Sec. 1-105. - Boundaries, abandonment, and uncertainty.
Sec. 1-106. - New and unlisted uses.
Secs. 1-107—1-125. - Reserved.

Sec. 1-105. - Boundaries, abandonment, and uncertainty.

The provisions of this section shall govern interpretations regarding the location of Zoning District boundaries shown on the official Zoning map.

District boundaries following property lines. District boundaries shown as approximately following property lines shall be construed as following such property lines.

District boundaries following right-of-way lines. District boundaries shown as approximately following right-of-way lines of a street, highway, alley, railroad or other identifiable boundary shall be construed as following such right-of-way line or identifiable boundary.

District boundaries not following identifiable features. On un-subdivided land, or in instances where a Zoning District boundary follows no identifiable feature, the location of Zoning District boundaries shall be determined by using the map scale appearing on the official Zoning map, unless

the District line is indicated by dimensions printed on the official Zoning map, in which case the printed dimensions shall control.

Street abandonments. Wherever any street, alley, or public way is abandoned or vacated by official action of the City Council, the Zoning Districts adjoining each side of such street, alley, or public way shall be automatically extended to the centerline of such abandonment or vacation and all area included in the abandonment or vacation shall be subject to the regulation of the extended Districts.

Uncertainties. Where existing physical or natural features contradict those shown on the official Zoning map or in case any other uncertainty exists, the location of District boundaries shall be determined by the City Administrator or his designee.

Sec. 1-106. - New and unlisted uses.

If the City Administrator determines that a proposed use is not a listed use or there is some ambiguity of its proper classification under the land use matrix, the City Administrator will make a determination regarding the appropriateness of the activity to the zone and surrounding uses. Challenges to the City Administrator's determination shall be made to the Board of Adjustment not more than thirty (30) days after receipt of the written notification.

Sections. 1-107—1-125. - Reserved.

DIVISION 4. - INTERPRETATIONS OF ZONING ORDINANCE TEXT

Sec. 1-126. - Purpose.
Sec. 1-127. - Authority.
Sec. 1-128. - Request for interpretation.
Sec. 1-129. - Rendering of interpretation.
Sec. 1-130. - Form.
Sec. 1-131. - Official record.
Sec. 1-132. - Appeal.
Sections 1-133—1-162. - Reserved.

Sec. 1-126. - Purpose.

The regulations of this division shall govern the rendering of written interpretations of the provisions of this Ordinance.

Sec. 1-127. - Authority.

The City Administrator shall have authority to make all written interpretations concerning the provisions of this Ordinance.

Sec. 1-128. - Request for interpretation.

A request for interpretation shall be submitted to the City Administrator in a form established by the City Administrator and made available to the public.

Sec. 1-129. - Rendering of interpretation.

Within ten (10) business days after a request for interpretation has been submitted, the City Administrator shall:

(1) Review and evaluate the request in light of the text of this Ordinance, the official Zoning map, the comprehensive plan and any other relevant information;

(2) Consult with other staff, as necessary; and

(3) Render an opinion.

Sec. 1-130. - Form.

The interpretation shall be provided to the applicant in writing and sent to the applicant by mail.

Sec.1-131. - Official record.

The City Administrator shall maintain an official record of interpretations. The record of interpretations shall be available for public inspection during normal business hours.

Sec. 1-132. - Appeal.

Appeals of written interpretations made by the City Administrator shall be taken to the Board of Adjustment within thirty (30) days after receipt of the interpretation. In considering such an appeal, the Board of Adjustment shall consider the interpretation and public testimony in light of the comprehensive plan, this Ordinance and the official Zoning map, whichever are applicable. The Board of Adjustment shall modify or reject the interpretation only if it is not supported by substantial competent evidence or if the interpretation is contrary to the comprehensive plan, this Ordinance, or the official Zoning map.

Sections. 1-133—1-162. - Reserved.

ARTICLE III. - DISTRICT REGULATIONS
DIVISION 1. - GENERALLY
DIVISION 2. - DISTRICT REGULATIONS AND USE TABLE

DIVISION 1. - GENERALLY
Sec. 1-163. - Districts established.
Sec. 1-164. - Off-street parking.
Sec. 1-165. - Landscaping.
Sec. 1-166. - Fencing.
Secs. 1-167—1-185. - Reserved.

Sec. 1-163. - Districts established.

(a) ***Generally.*** In order to implement the City comprehensive plan and promote the purposes of this Ordinance, the following Zoning Districts are established:

District Name	Maps Symbol
Residential acreage	**R1**
Residential lots	**R2**
Commercial	**C**
Industrial	**I**
Multi-family	**MF**
Special Use Permit	**SUP**

Community Facilities	**CF**
Planned Unit Development	**PUD**
Downtown District	**DD**
Manufactured Housing	**MH**

(b) ***Applicable regulations.*** The following regulations shall apply to all Districts:

(1) Lot design, arrangement and layout. The lot arrangement shall be such that there will be no foreseeable difficulties, for reasons of topography or other conditions, in securing building permits to build on all lots in compliance with all local regulations and in providing driveway access to buildings on the lots from an approved street.

a. the lot is of sufficient size and shape to accommodate easements for all public and private utility services and facilities to adequately serve any improvements constructed thereon;

b. the lot is of sufficient size and shape and is so located that direct vehicular access is provided from a public or 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;

c. the lot is of sufficient size and shape to accommodate all required improvements and detention areas; and

d. The minimum single-family residential lot size is six thousand (6,000) square feet.

(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 hereof, 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 be allowed if otherwise in compliance with the minimum lot size requirements of this and other applicable Ordinances of the City and provided that any such lot is at least fifty feet (50') in width at its building set-back line.

(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) Building lines.

a. Front: Twenty-five feet (25’); except cul-de-sac lots which may be twenty feet (20’). Cul-de-sac lots are lots adjacent to the actual cul-de-sac beginning at the curve of the street and do not consist of all lots on a cul-de-sac street;

b. Side: Five feet (5’) on each side; and

c. Corner lots: Twenty-five feet (25’) on the front; Fifteen feet (15’) on street side; Five feet (5’) on inner lot line side.

d. Exceptions: Planned Unit Development District consisting of a development of at least one thousand five hundred (1,500) acres which will result in the construction of more than seven hundred (700) single-family residential homes may plat not more than five percent (5%) of the development with side set-backs of zero feet (0’) on one side and ten feet (10’) on the other side to allow for the construction of specialty housing products. Such exceptions shall be allowed so long as the portion of the development in which specialty housing products are to be located is platted as a single section of development that has uniform lots sizes throughout the development.

Type of Development	**Spatial Unit**	**Minimum Lot Width (feet)**	**Minimum Lot Depth (feet)**	**Front Setback (feet)**	**Side Setback (feet)**	**Lot Size (square feet)**
Single Family				25	5	6000
	CornerLot Street Side			25	15	6000
	Corner Lot Inner Lot Side			25	5	6000
	Cul de Sac Lot			20	5	6000
	Key Shaped	50		25	5	6000
Multi-Family				25		
	Corner			25	10	
Mobile/Manufactured Homes		60	100			6000

(c) Minimum Multi-Family and apartment lot dimensions.

1. Maximum: eighteen (18) units per acre. This restriction shall be noted on the plat.

2. Building lines: twenty five feet (25’) on front, ten feet (10’) on side of corner lots. Generally, the front of the lot shall be defined as the side of the lot parallel to the main facade of the building or structure. Where there is a question, the front of a lot shall be defined as the side of the lot containing the driveway or front door.

(d) Minimum manufactured housing lot dimensions.

1. A Subdivider may either plat one (1) master lot on which there may be located a manufactured housing home as defined by State law, or a manufactured housing park, or several distinct lots wherein there is to be no common elements.

2. Individual lots not part of a manufactured housing park or condominium:
    a. Minimum width: sixty feet (60').
    b. Minimum depth: one hundred feet (100').
    c. Minimum area: six thousand (6,000) square feet.
3. *Lot orientation.* The lot line common to the street right-of-way shall be the front line. All lots shall face the front line and a similar line across the street. Wherever feasible, lots shall be arranged so that the rear line does not abut the sideline of an adjacent lot.

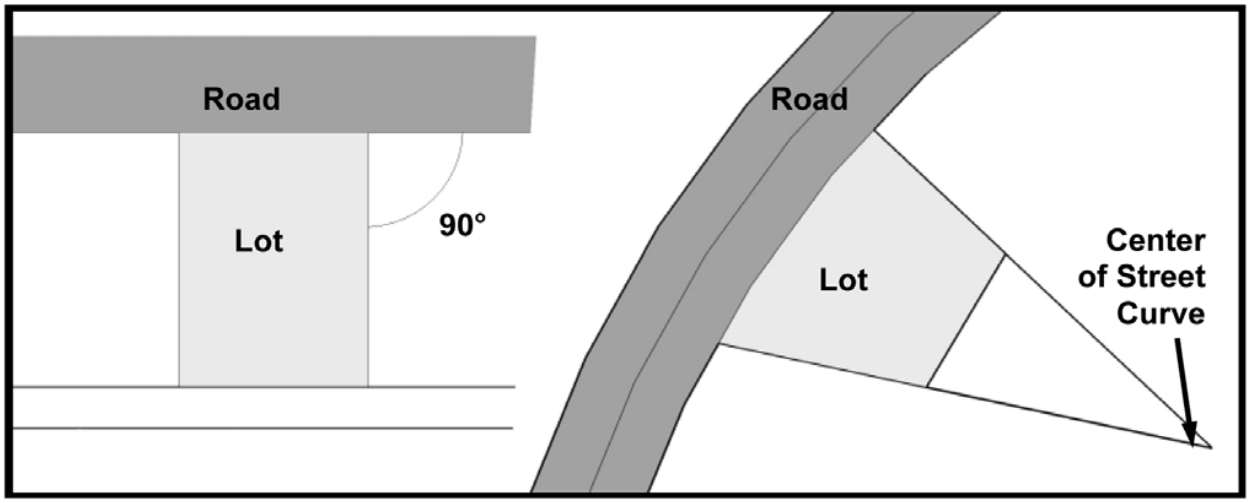


Figure E.

(6) Double frontage lots and access to lots.

a. *Double frontage lots.* Double frontage shall be prohibited except for corner lots where two (2) streets bisect.

b. *Access from major and minor arterials.* Lots shall not, in general, derive any access from a major thoroughfare. Where driveway access from a major thoroughfare may be necessary for several contiguous lots, the City Council may require that such lots be served by a private combined access drive in order to limit possible traffic hazards on the street.

(7) Soil preservation, grading, and seeding.

a. *Soil preservation and final grading.* No certificate of occupancy shall be issued until final grading has been completed in accordance with the approved final Subdivision plat and the lot pre-covered with soil with an average depth of at least six inches (6") which shall contain no particles more than two inches (2") in diameter over the entire area of the lot, except that portion covered by buildings or included in streets, or where the grade has not been changed or natural vegetation seriously damaged. Topsoil shall not be removed from residential lots or used as spoil, but shall be redistributed so as to provide at least six inches (6") of cover on the lots and at least

four inches (4”) of cover between the sidewalks and curbs, and shall be stabilized by seeding or planting. Sites where the natural vegetation is in place and sufficiently absorbs and distributes the drainage of the lots in the view of the City Engineer need not be disturbed.

b. *Lot drainage.* Lots shall be laid out so as to provide positive drainage away from all buildings, and individual lot drainage shall be coordinated with the general storm drainage pattern for the area. Drainage shall be designed so as to avoid draining into adjacent lots. The top of the slab or foundation on the lots shall be built to the higher of:

   i. Twenty four inches (24”) over the base flood elevation (when lot is in a floodplain);

   ii. Eighteen inches (18”) over the average terrain;

   iii. Eighteen inches (18”) over elevation of the crown of the road when drainage is by an open ditch; or

   iv. Eighteen inches (18”) over elevation of the curb when drainage is by a curb and gutter. All drainage requirements shall meet the county criteria manual standards per the City Engineer.

c. *Lawn, grass, seed and sod.* Seeding and sod requirements should reflect local conditions. All lots shall be seeded from the roadside edge of the unpaved right-of-way back to a distance of twenty five feet (25”) behind the principal residence on the lot. No certificate of occupancy shall be issued until re-grading of soil and seeding of lawn has been completed; except when the Subdivider or builder submits an agreement in writing signed by the Subdivider or builder and the property owner, with a copy to the City Administrator and City Engineer, that re-grading of soil and seeding of lawn will be done during the next planting season, and place on deposit with the City a cash escrow for performance in an amount determined by the City Administrator. Sod may be used to comply with any requirement of seeding set forth herein.

(8) Debris and waste. No cut trees, timber, debris, rocks, stones, soil, junk, rubbish, or other waste materials of any kind shall be buried in any land, or left or deposited on any lot or street at the time of the issuance of a certificate of occupancy, and removal of those items and materials shall be required prior to issuance of any certificate of occupancy on a Subdivision. No items and materials as described in the preceding sentence shall be left or deposited in any area of the Subdivision at the time of expiration of any Subdivision improvement agreement or dedication of public improvements.

(9) Lot grading and elevation. No building shall be commenced until each associated lot within a platted section of a Subdivision is graded or configured in accordance with the Subdivision's approved grading plan and in accordance with the minimum standards set forth in subsection (b)(7) of this section.

Sec. 1-164. - Off-street parking.

No new construction or expansion of an existing use shall be permitted without compliance with the following off-street parking regulations. Additionally, where existing parking areas are determined to be inadequate for use or occupation changes, these requirements shall be required.

(1) *Dimensions.* Required off-street parking shall meet the following off-street parking requirements:

Parking Angle	Space Width (feet)	Space Length (feet)	Two-Way Traffic Aisle Width (feet)	One-Way Traffic Aisle Width (feet)
Parallel	9	20	N/A	12
45 degrees	9	18	25	14
60 degrees	9	18	25	18
90 degrees	9	18	22	22

(2) Americans with Disabilities Act (ADA) requirements. The following regulations shall be the minimum standards for the installation of accessible parking spaces. The existence of this section shall in no way supersede any revisions of the federal Ordinance governing these regulations and requirements. When there is conflict between the provisions, the more restrictive shall apply.

Total Parking Spaces in Lot	Minimum Disabled-Accessible Spaces
1-25	1
26-50	2
51-75	3
76-100	4
101-150	5
151-200	6
201-300	7
301-400	8
401-500	9
501-999	2 percent of spaces
Over 1,000	20 spaces plus one space for every 100 spaces over 1,000

(3) General parking requirements. Off-street parking shall meet the following general requirements. All parking lots shall be of concrete construction. Any fraction of a parking space derived mathematically by the City Administrator shall be construed to mean one (1) additional lot (i.e., thirty one and twenty five hundredths (31.25) calculated spaces shall mean thirty two (32) spaces are required).

a. Accesses to parking areas shall be coordinated with adjacent property owners and parking lots such that no more than one (1) access shall be allowed for every four hundred feet (400') of frontage.

b. Residences in R1 and R2 Districts shall provide a minimum of two (2) parking spaces enclosed in a garage. These areas shall also provide a minimum of two (2)

off-street parking spaces per residential unit. These may be located in the driveway portion of the lot. This shall apply to Manufactured Homes.

c. Multi-Family (MF) District structures, including townhomes, apartments, duplexes, and other similar structures, shall provide a minimum of two and twenty five hundredths (2.25) parking spaces per unit, with at least one (1) of these spaces per unit covered.

d. Commercial uses shall generally be required to provide one (1) parking space for every two hundred fifty (250) square feet of aggregate finished floor space. The following are exceptions to this rule:

    1. Automobile repair, service, carwash, places of worship, theaters, convenience store, and fitness centers shall have one (1) space for every two hundred (200) square feet of finished floor space.

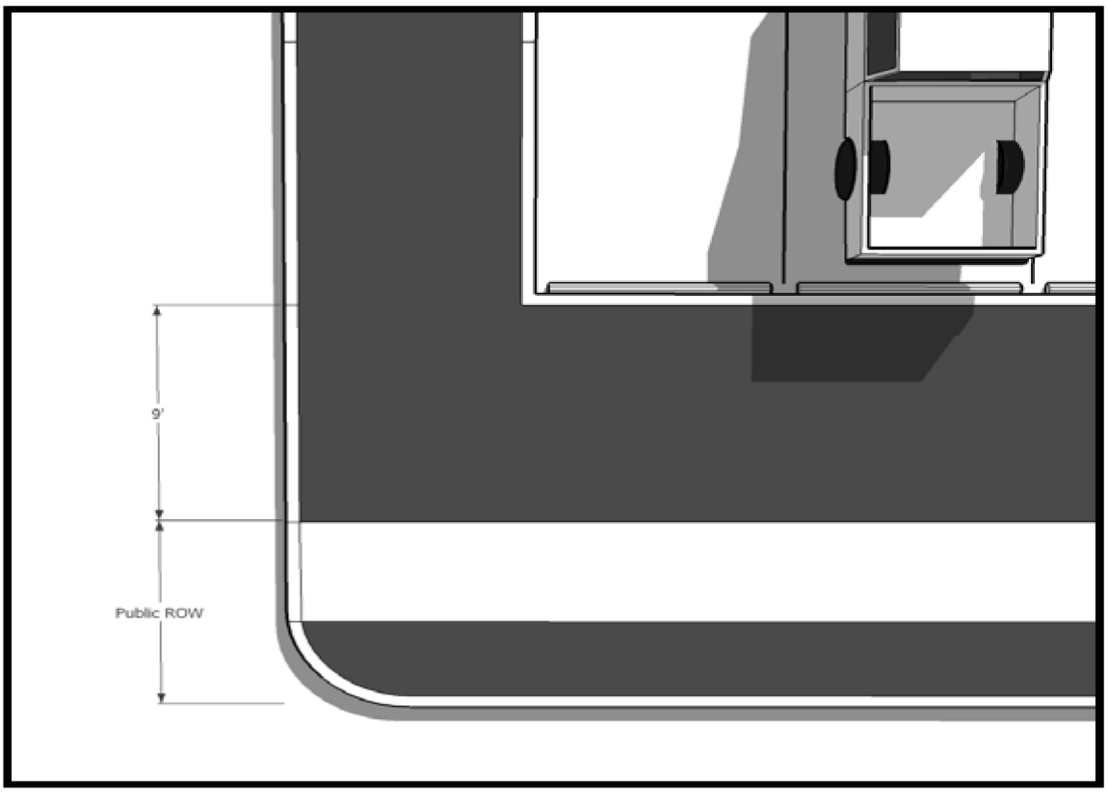
    2. Hotels, motels, and other similar businesses, shall have a minimum of one and one half (1.5) parking spaces per bed.

    3. Day care, preschool, and similar uses shall provide a minimum of one (1) space per staff member plus one (1) space per five (5) students, calculated based on the maximum capacity of the school or day care.

e. Institutional, manufacturing, and other heavy and light Industrial uses shall provide one (1) space per person employed on the highest use shift.

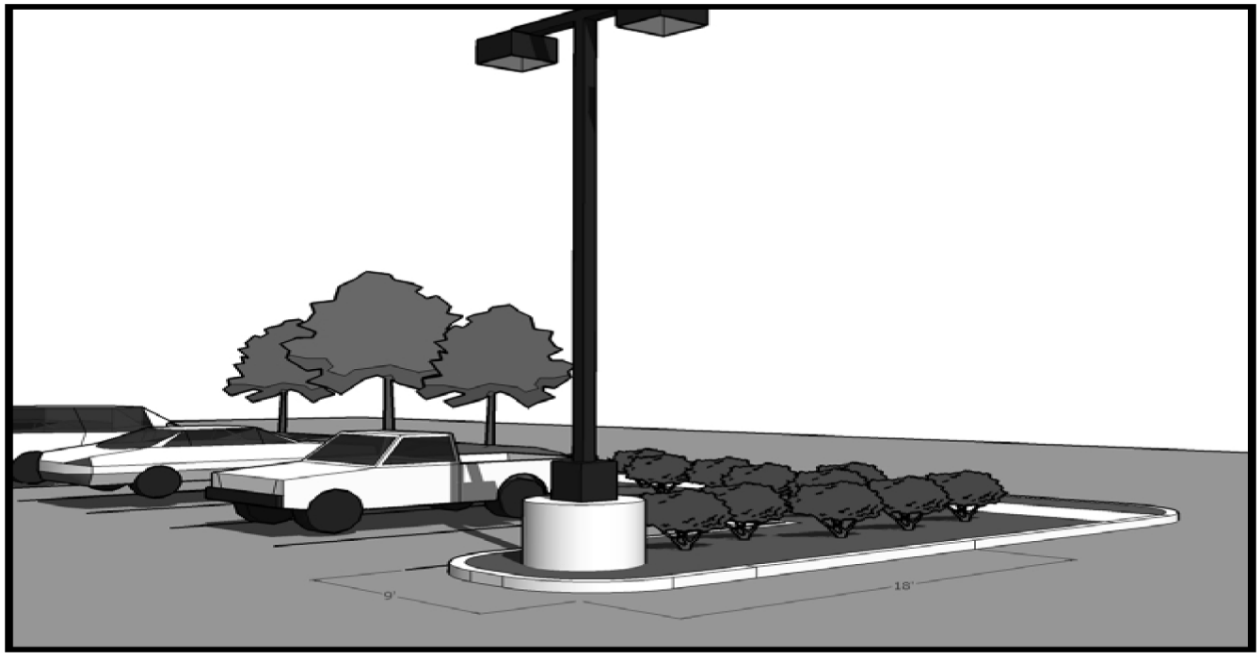
f. Landscaping requirements in off-street parking lots.

    (1) All parking areas adjacent to major arterials shall incorporate a nine-foot (9’) minimum landscaped buffer area along the public right-of-way (see image below). Any ditch or other landscaped drainage easement shall not be counted towards this requirement.

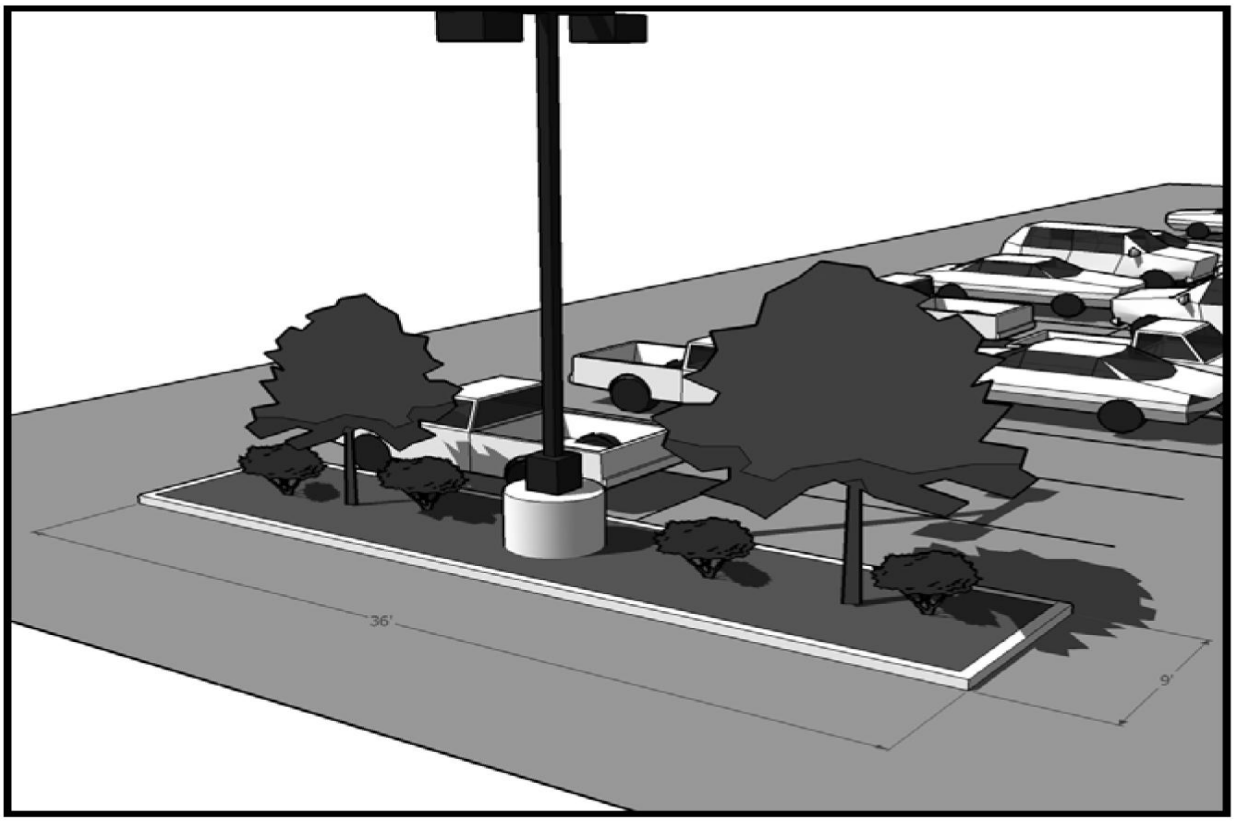


9' parking buffer

(2) All parking rows are required to have landscaped islands at the ends of parking rows, and no more than ten (10) parking spaces in a row shall be allowed without a landscaped island. These islands shall contain parking lot lighting as required, and shall have a minimum of two (2) trees and four (4) shrubs. Single parking rows shall have islands that are a minimum overall dimension of nine feet (9') by eighteen (18') feet, or the standard dimension of one (1) parking space. Double parking rows shall have islands that are a minimum overall dimension of nine feet (9') by thirty six (36') feet. Angled parking shall meet the same dimensions as ninety (90) degree parking. See the images below for general guidelines.



Parking island layout – single row



Parking island layout – double row

(3) Raised sidewalks shall be constructed in a manner that is compliant with all applicable federal and State regulations. Sidewalks shall be placed such that easy access is allowed from all parts of the parking lot (usually in the center of the parking lot). Sidewalks shall be a minimum of ten feet (10') wide and shall be raised a minimum of four inches (4") above the finished parking lot grade. Disabled access points shall be provided at parking row ends in connection with the landscaped islands at the end of the parking rows. See the illustration below for an example.

Raised walkway

<u>Sec. 1-165. - Landscaping.</u>

(a) Purpose. The purpose of this section is to provide a standard throughout the City regarding minimum standards for landscaping. Landscaping is encouraged throughout the City as a buffer and screen against undesirable views and use separation.

(b) Required landscaping improvements. The improvements listed and explained in this section shall be required of all new structures and any renovated structure where the renovation exceeds fifty percent (50%) of the replacement cost of the structure, as well as public right-of-way dedications, HOA-maintained common areas and open spaces, and any other public or quasi-public area.

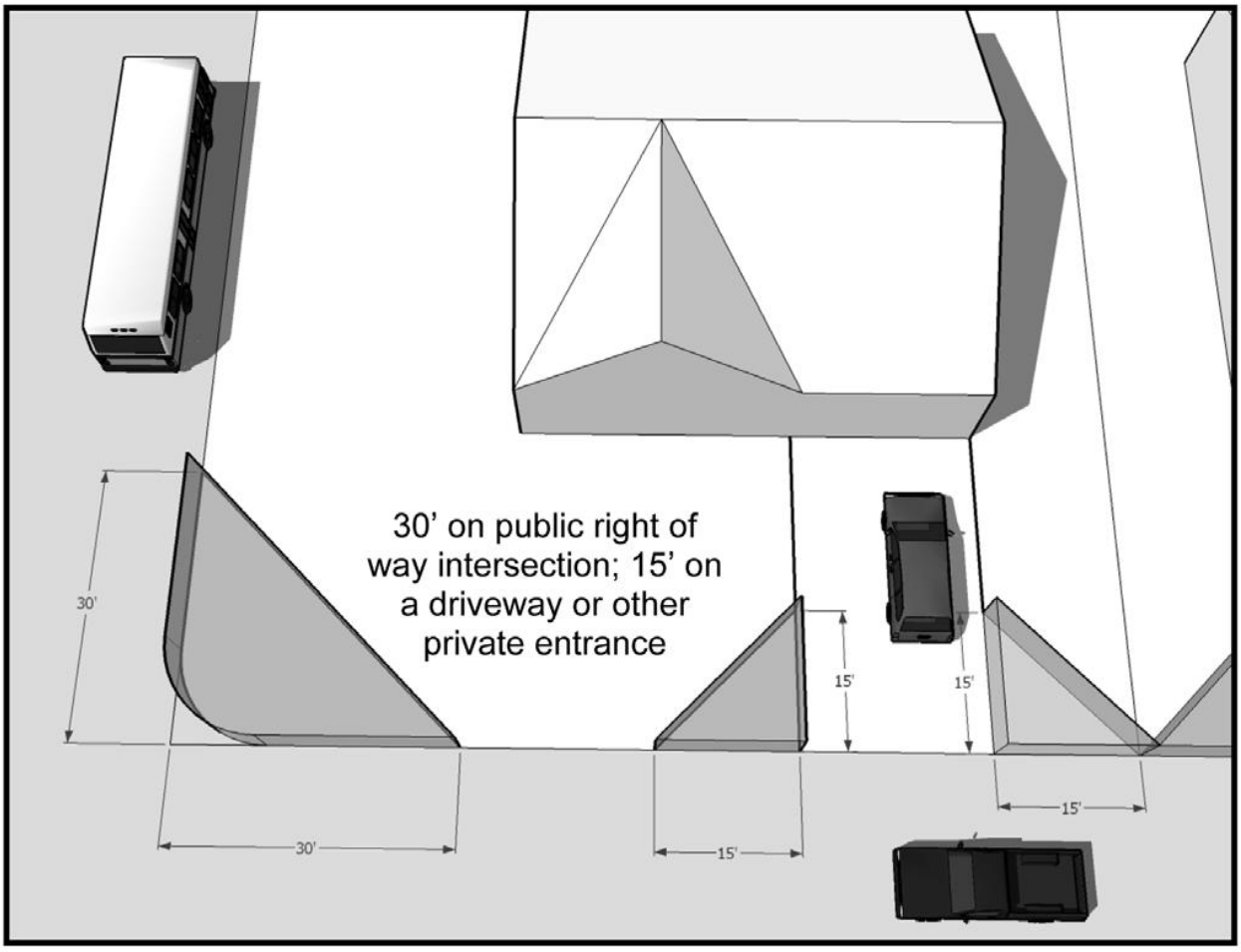
(c) General provisions. The following provisions shall apply to each property and development:

(1) Newly constructed buildings in Commercial areas shall have automatic irrigation systems installed for watering landscaping, including parking lots, park strips, and areas near the building.

(2) Landscaping shall be maintained by providing irrigation, removing weeds, trimming the lawn areas, and all other practical steps to ensure the health and aesthetics of the landscaped area. The topping of trees shall be strictly prohibited.

(3) Trees projecting over any public right-of-way shall be trimmed and clear of the right-of-way to a height of fourteen feet (14') for the portion of the plant located in the proximity of the right-of-way.

(4) No landscaping or fencing over three feet (3') high as measured from the crown of the road shall be allowed in the clear view triangle (see illustration below). In the case that a clear view triangle extends beyond a lot line, the clear view triangle shall remain clear of obstruction. Adjacent properties affected by another's clear view triangle may be eligible for compensation for adverse landscaping effects.



Clear view triangle

(5) Lava rock or other crushed rock as a ground cover is generally prohibited, but may be allowed in paths and other accent locations. Large rocks (over twenty (20) lbs.) as decorative elements are permitted in connection with an overall landscaping approval.

(6) Trees shall not be planted on gas pipelines, drainage canals or ditches, or under overhead power lines. Trees may be planted along detention and retention basins and ponds as approved by the City Engineer, Planning and Zoning Commission, and City Council.

(7) Trees shall be preserved *in situ* to the extent possible. Some trees are less desirable due to the nature of the tree and the proposed use (e.g., disease-prone trees, invasive species, aggressive species, or messy fruit-bearing trees). These trees shall be removed at the discretion of the developer. The developer shall provide a plan showing all remaining trees over six inch (6") caliper measurement, marking those for removal and a replacement plan. Trees are not required to be moved, but replacements are required for each tree thus removed. Tree removal and replacement plans are subject to approval by the Planning and Zoning Commission.

(d) Landscaping plans. All developments required to make landscaping improvements by this section shall submit a landscaping plan prepared by a licensed landscape architect or architect. Private residential areas shall be exempted from this requirement. City staff will review each landscaping plan submission for compliance with the Code for review by the Planning and Zoning Commission and City Council in connection with the remainder of the site plan submittal. Landscaping plans shall include at a minimum the following information:

(1) The locations and dimensions of all existing and proposed structures, property lines, easements, parking lots, power lines, rights-of-way, ground signs, trash collection areas, and lighting. Landscaping plans in or adjacent to residential use areas shall include a photometric analysis of all exterior lighting, demonstrating light coverage and any spillover into adjacent properties.

(2) The plant names (both botanical and common), locations, quantity, and size of all existing and proposed plants. See subsection (f) of this section for additional information regarding proposed trees and plants. The proposed plan should show the size of the plants at maturity.

(3) The landscaping plans shall show all landscaping located within twenty feet (20') of the property line.

(4) Existing and proposed grading with six inch (6") interval contour lines.

(5) Irrigation plans shall be submitted showing fixtures, connection points, and irrigation lines.

(6) Proposed and existing fences and identification of fencing materials.

(7) A summary of the total percentage of landscaped areas, domestic turf grasses, drought tolerant plants, as well as an estimate of the costs associated with the landscaping improvements.

(e) Completion of landscaping improvements. All landscaping improvements shall be completed in compliance with the approved site plan, landscaping planting plan, and irrigation plan and must be completed prior to the issuance of a certificate of occupancy. Exceptions may be

granted where weather factors prohibit the timely implementation of the schedule. In such cases, an extension not to exceed six (6) months may be permitted. A surety or cash bond of not less than one hundred ten percent (110%) of the total value of the landscaping shall be in place before the exception is permitted. The bond will be held until the project is in full compliance with the approved landscape and site plans and the provisions in this section.

(f) *Planting standards and design guidelines.* The following planting standards reflect the minimum that will be acceptable to the City for landscaping as required in this section. These design guidelines are an enumeration of specific preferences pertaining to landscaping encouraged by the City. These guidelines are to be used by the Planning and Zoning Commission and City Council in their review of acceptable landscaping plans.

(1) *Planting standards for new development.* The following are planting standards that shall be followed for all new development (note: all caliper measurements reflect the diameter at breast height or dbh):

a) *Deciduous trees.* All deciduous trees shall have a minimum trunk size of two and one half inches (2½”) in caliper.

b) *Evergreen trees.* All evergreen trees shall have an overall height of five feet (5’).

c) *Ornamental trees.* All ornamental trees shall have a minimum trunk size of one and one half inches (1½”) in caliper.

d) *Shrubs.* All shrubs shall have a minimum height or spread of eighteen inches (18”).

e) *Turf.* No landscaping shall be of greater than seventy percent (70%) turf.

f) *Drought tolerant plants.* Drought tolerant species of trees and plants shall make up no less than fifty percent (50%) of all trees and shrubs.

(2) *Guidelines for landscape plan review.* The following guidelines shall be used when reviewing submitted landscaping plans:

a) *Selection of plants.* Plants shall be selected for texture, form, color, pattern of growth, and adaptability to local conditions.

b) *Evergreens.* Evergreens shall be incorporated into the landscape wherever screening and buffering are required.

c) *Softening of long walls, fences, or building facades.* Plants shall be placed intermittently along expanses of walls, fences, or building facades greater than ten feet (10’) in order to create a softening effect.

d) *Planting beds.* Planting beds are encouraged to be mulched with wood chips or other similar treatment. Planting beds may not be mulched with decorative rock, lava rock, crushed granite, or any other kind of rock unless the rock areas are under layered with a weed preventing barrier.

e) *Conservation of water.* Required irrigation systems shall use the highest and best technology available in order to conserve water. This may include drip

water systems, electronic timers, soil moisture detectors, and other similar systems.

f) *Energy conservation.* Placement and selection of plants may help reduce energy consumption. Placing deciduous trees on the west and south sides of buildings provides shade in the summer months. Further, placement of evergreen trees along wind corridors shelters buildings from the effects of strong winds.

g) *Preservation of existing vegetation.* Wherever feasible, existing vegetation shall be retained and incorporated into the new landscaping plan for the site.

h) *Berms.* Landscaping along major thoroughfares shall incorporate earthen berms as a screen from traffic or other adjacent land uses.

i) *Landscape placement near buildings.* Landscaping adjacent to buildings shall receive special scrutiny, particularly where there is a large expanse of unbroken facade.

(3) *Assessment of required landscaping.* Areas of a development that are not covered by parking, structures, or other impervious surfaces shall be landscaped according to this section in all zones.

(4) *Single-family residential landscaping requirements.* All single-family residential lot landscaping shall be installed within one (1) year for front yards and two (2) years for rear yards after receiving the certificate of occupancy. Landscaping in residential areas shall be of the same type and general nature as exists in the City (e.g., grass, shrubs, and trees as appropriate). All common areas in residential areas shall be landscaped prior to the issuance of the certificate of occupancy.

Sec. 1-166. - Fencing.

(a) Purpose. The purpose of this section is to provide a standard throughout the City regarding the minimum standards for fencing. Fencing is encouraged throughout the City as a buffer and screen against undesirable views and use separation.

(b) Generally.

(1) All trash collection areas of Commercial developments shall be screened by fencing or landscaping or both.

(2) No barbed wire, concertina wire, razor wire, barbed tape, or similar wire-type fences shall be allowed in any District except for the R1 District. Barbed wire may be allowed in areas requiring security, but all fencing shall be subject to all height restrictions, and barbed wire shall be located along the top of an approved fence below. In addition, no chain link fences shall be allowed in the front yard area of any lot.

(c) Screening and fencing regulations. The following provisions shall govern the height, materials, and styles of fences throughout the City:

(1) Properties within the R-2 Residential Zoning District having fences exceeding three feet (3') in height shall not extend into the front yard (past the front building line or furthest projection of the building) of any lot. Properties within the R-1 Residential Zoning District may have fences of up to five feet (5') in height and may extend into the front yard past the front building line. Properties within the Downtown District with Agricultural usage at the time of adoption of this Ordinance shall be permitted to have fencing of the same type and standard as found in the R-1 Residential District. Properties within the Downtown District that did not have an Agricultural use at the time of the adoption of this Ordinance shall follow the same type and fencing standards as found in the R-2 Residential District.

(2) Fences in the front of any Residential property shall be of a semiprivate nature, not to exceed fifty percent (50%) total blockage. Thus, the spaces between solid fencing must be at least as wide as the solid portions.

(3) Fences over six feet (6') in height and all retaining walls in excess of eighteen inches (18") shall require a building permit.

(4) Double frontage corner lots may have a fence along the rear of the property line. Such a fence must be installed with a mow strip and be located immediately adjacent to the sidewalk, curb and gutter, or street. Fencing extending to the rear of the double-frontage lot beyond the front building lines of adjacent properties is limited to three feet (3') in height. Any such fence shall provide for a twenty foot by twenty foot (20' X 20') visibility triangle so as not to hinder traffic sight lines.

(5) If a lot has a drainage ditch in the rear of the lot, fencing is limited to three feet (3') in height, must have an access gate, and shall be semiprivate fencing. This is to allow the property owner access to the drainage ditch for maintenance of the landscaping in that area.

(6) All fencing in connection with Multi-Family, Commercial, or Industrial developments shall receive approval with the site plan review from the Planning and Zoning Commission and City Council.

(7) The use of solid walls (e.g., concrete, concrete block, or stucco) for screening purposes is required for trash receptacle area enclosures on three (3) sides for commercial uses.

(8) The use of solid walls for screening or property line delineation in all other circumstances is to be strictly avoided. In places where the Planning and Zoning Commission deems appropriate (i.e., where the use is unsightly, noisy, or dangerous and a solid wall is required), such walls shall have a landscaping border of not less than six feet (6') as a buffer to adjacent properties. This border shall follow the entire length of the property line where the wall is constructed.

(9) Fencing around utility substations shall be of wrought iron or brick and shall require a permit from the City.

Sections. 1-167—1-185. - Reserved.

DIVISION 2. - DISTRICT REGULATIONS AND USE TABLE

Sec. 1-186. - Residential Acreage Use (R1) District regulations.
Sec. 1-187. – Residential Lot (R2) District regulations.
Sec. 1-188. - Commercial (C) District regulations.
Sec. 1-189. - Industrial (I) District regulations.
Sec. 1-190. - Multi-Family (MF) District regulations.
Sec. 1-191 – Community Facilities (CF) District regulations
Sec. 1-192 – Planned Unit Development (PUD) District regulations.
Sec. 1-193 – Downtown (DD) District regulations.
Sec. 1-194 – Manufactured Housing (MH) District regulations
Sec. 1-195. - Land use types summarized on land use table.
Sec. 1-196. - Land use categories table.
Secs. 1-197—1-224. - Reserved.

Sec. 1-186. – Residential Acreage (R1) District regulations.

(a) Purpose. The residential acreage (R1) District is intended to accommodate agricultural and very low-density single-family residential uses.

(b) Uses permitted by right. In the residential acreage (R1) District, no building or land shall be used and no building erected except for one (1) or more of the following specified uses, unless otherwise provided in this division:

(1) Single-family detached dwellings on single lots no smaller than one (1) acre;

(2) Safety services;Public parks and recreational facilities;

(3) Agricultural uses; and

(4) Group Homes

(e) Special uses. The following uses of land and structure are permitted in this District if they meet the supplementary use standards outlined in section 1-225

(1) Place of worship;

(2) Schools;

(3) Pre-school;

(4) Day care centers;

(5) Home occupations;

(6) Public/private residential facilities;

(7) Private/quasi-public schools;

(8) Hospital; and

(9) Library.

(f) Special use permits. The following uses of land and structure are permitted in this District if they are approved in the process outlined in section 1-283:

(1) Private Kennel;

(2) Stables; and

(3) Private parks and recreational facilities.

(g) Permitted accessory uses. The following are permitted accessory uses:

(1) Those accessory uses permitted under section 1-226;

(2) Any structural or mechanical permitted use, and a use customarily incidental to the permitted use; and

(3) Off-street parking attributable to the permitted use.

Sec. 1-187. – Residential Lot (R2) District regulations.

(a) Purpose. The residential lot (R2) District is intended to accommodate a majority of the anticipated single-family residential development in the City during the next twenty (20) years. The R2 District will provide for a residential environment dominated by single-family detached dwellings in platted Subdivisions as well as alternative residential types. Excluded are uses of nonresidential character including Commercial and Industrial uses.

(b) Uses permitted by right. In the residential lot (R2) District, no building or land shall be used and no building erected except for one (1) or more of the following specified uses, unless otherwise provided in this division:

(1) Single-family detached dwellings on single lots;

(2) Places of worship;

(3) Safety services;

(4) Parks and recreational facilities; and

(5) Group Homes.

(c) Special uses. The following uses of land and structure are special uses in this District and must meet the supplementary use standards outlined in section 1-225

(1) School;

(2) Home occupation; and

(3) Library.

(d) Permitted accessory uses. The following are permitted accessory uses:

(1) Those accessory uses permitted under section 1-226;

(2) Any structural or mechanical use customarily incidental to the permitted use; and

(3) Off-street parking attributable to the permitted use.

Sec. 1-188. – Commercial (C) District regulations.

(a) *Purpose*. The Commercial (C) District is intended to allow the development of Commercial activity. The District will incorporate existing Commercial and institutional uses and accommodate a variety of future neighborhood retail and community services.

(b) *Uses permitted by right*. In the Commercial (C) District, no building or land shall be used and no building erected except for one (1) or more of the following specified uses, unless otherwise provided in this division:

(1) Safety Services;

(2) Parks and Recreation;

(3) Eating and drinking places;

(4) Retail;

(5) Convenience Retail;

(6) Office;

(7) Automobile sales;

(8) Day Care Center;

(9) Place of Worship; and

(10) Art gallery or museum

(11) Thrift shops and/or secondhand stores;

(c) Special Uses. The following uses of land and structures are permitted in this District if the meet the supplementary use standards outlined in section 1-225

(1) School;

(2) Library;

(3) Hospital;

(4) Home Occupation;

(d) *Special use permits.* The following uses of land and structure are permitted in this District if they are approved in the process outlined in section 1-283:

(1) Animal Shelters or veterinary offices housing animals outdoors, kennels, stables, or any other use that keeps animals outdoors;

(2) Temporary use stands, such as fruit or vegetable stands, hot dog or taco stands, snow cone shacks, and other establishments of a similar nature. Exceptions may be permitted for special events (e.g. carnivals, parades, etc.), but such exceptions shall be for a maximum period of seventy two (72) hours (three operational days);

(3) Automobile repair – new and used parts and service, enclosed (not salvage yards or similar); and

(4) Public House

(5) Single family detached dwellings on single lots; Single family homes may be restored or replaced if they are substantially destroyed as described in Sec. 1-317.

(e) *Prohibited uses*. The following uses of land and structure are expressly prohibited in this District:

(1) Gambling halls, parlors, or other establishments for gaming (including 8-liners, card tables, slot machines for prizes, and other similar devices) retail liquor establishments, except grocery stores;

(2) Private clubs;

(3) Tattoo parlors and body piercing establishments;

(4) Palm readers, palmistry shops, psychics and tarot card readers;

(5) Smoking paraphernalia establishments or any other kind of associated paraphernalia retail outlets;

(6) Stores or shops where tobacco sales account for more than fifty percent (50%) of the retail sales;

(7) Pawnshops or shops containing remaindered goods;

(8) Check cashing, title loan, short term loan, or payday loan offices;

(9) Mobile homes or HUD Manufactured Homes

(10) Other uses not conducive to the orderly and attractive function of the main street area of the City. These uses include those that affect the health, safety, and welfare, offend the morals and values, or create a nuisance to the community. The City Council shall give a reasoned determination for the prohibition of any proposed use which must be approved by a unanimous vote of all Council members.

This prohibition does not imply that these uses will be allowed in other Districts.

(f) *Permitted accessory uses*. The following are permitted accessory uses:

(1) Those accessory uses permitted under section 1-226

(2) Any structural or mechanical use customarily incidental to the permitted use; and

(3) Off-street parking attributable to the permitted use.

<u>Sec. 1-189 – Industrial (I) District regulations.</u>

(a) *Purpose*. The purpose of this District is to regulate those uses of the land and structures that involve the manufacturing, assembly, processing, storage, or distribution, sale, and repair of materials, goods, parts, products, equipment, machinery, other such operations incidental to Industrial uses, and Sexually Oriented Businesses, pursuant to V.T.C.A., Local Government Code Ch. 243 and as set forth herein. Residential uses are prohibited in this District. Those residential uses that existed at the time of adopting this Ordinance may continue as nonconforming uses and the applicable nonconforming use regulations shall apply. Specific Industrial uses are not excluded from this District, however, all proposed Industrial uses and Sexually Oriented Businesses and requests for Industrial Zoning and Sexually Oriented Businesses shall be accompanied by a development site plan. Where the intended use may cause a detrimental change to the environment or substantially affect the public utility or thoroughfare systems. Sexually Oriented Businesses are subject to the permit process set forth in section 1-225.

(b) *Uses permitted by right*. In the Industrial (I) District, no building or land shall be used and no building erected except for one or more of the following specified uses, unless otherwise provided in this division:

(1) Pawn shops;

(2) Automobile display or sales, repair garage, tire or seat cover shop;

(3) Automobile used car sales;

(4) Blacksmithing;

(5) Carpentry, painting, plumbing, or tin smithing shop (including contractor's shop or storage);

(6) Ceramic or pottery manufacture - with dust, odor, and fume control;

(7) Manufacturing of saddles, other leather products, jewelry, draperies or interior decorations;

(8) Radio or television broadcasting stations or studios with on-site towers;

(9) Textile manufacturing;

(10) Wholesale distribution and warehousing- no outside storage;

(11) Woodworking or planning mill - with dust, odor, and fume control;

(12) Accessory buildings and uses customarily associated with any of the above establishments to which they refer, except that they shall not be placed within any required setback;

(13) Outdoor storage, mini-storage, self-storage, or facilities requiring the storage of goods or equipment outside (e.g. truck or van rentals, heavy equipment rentals, outdoor nurseries, etc.)

(c) *Special Uses.* The following uses of land and structures are permitted in this District if the meet the supplementary use standards outlined in section 1-225.

(1) Sexually Oriented Businesses.

*(*d*)* *Permitted accessory uses*. The following are permitted accessory uses:

(1) Those accessory uses permitted under section 1-226;

(2) Any structural or mechanical use customarily incidental to the permitted use; and

(3) Off-street parking attributable to the permitted use.

(e) *Prohibited uses*. The following uses of land and structure are expressly prohibited in this District:

(1) Mobile homes or HUD Manufactured Homes

<u>Sec. 1-190 – Multi-Family (MF) District regulations.</u>

(a) *Purpose*. This District allows medium to high density Multi-Family dwellings and is intended to comprise larger tracts of land which provide total residential amenities such as open space, recreation space, and areas of protected off-street parking.

(b) *Uses permitted by right*. In the Multi-Family (MF) District, no building or land shall be used and no building erected except for one (1) or more of the following specified uses, unless otherwise provided in this division:

(1) Single family, detached dwellings on single lots;

(2) Multi-Family dwellings;

(3) Safety services;

(4) Parks and recreational facilities; and

(5) Group Homes.

(c) *Special Uses*. The following uses of land and structure are permitted in this District if they meet the supplementary use standards outlined in section 1-225.

(1) School;

(2) Home occupations;

(3) Library;

(4) Hospital; and

(5) Day Care Center.

(d) *Permitted accessory uses*. The following are permitted accessory uses:

(1) Those accessory uses permitted under section 1-226;

(2) Any structural or mechanical use customarily incidental to the permitted use;

(3) An accessory building necessary to store equipment for several dwelling units or provide service function for several dwelling units. No such accessory building shall be occupied as a place of abode. Any accessory building which is not a part of the main building shall be separated from the main building by a minimum of ten feet (10'); and

(4) Off-street parking attributable to the permitted use.

Sec. 1-191 – Community Facilities (CF) District regulations.

(a) *Purpose*. This District is intended to provide areas for public and semiprivate institutions, health care facilities and identify certain existing public and semipublic park and recreational areas as well as public land and facilities used for educational and governmental purposes.

(b) *Uses permitted by right*. In the Community Facilities (CF) District, no building or land shall be used and no building erected except for one (1) or more of the following specified uses, unless otherwise provided in this division

(1) Public parks, open space, or other public area purchased or dedicated for recreational purposes;

(2) Except as provided herein, facilities of the government of the United States, State of Texas, or a political Subdivision thereof; and

(3) Semipublic lands and facilities primarily used for providing recreational facilities or open space for residents of a particular residential Subdivision.

(c) *Special Uses*. The following uses of land and structures are permitted in this District if they meet the supplementary use standards outlined in section 1-225:

(1) Place of worship;

(2) School;

(3) Hospital; and

(4) Library

(d) *Permitted accessory uses*. The following are permitted accessory uses:

(1) Those accessory uses permitted under section 1-226;

(2) Any structural or mechanical use customarily incidental to the permitted use; and

(3) Off-street parking attributable to the permitted use.

Sec. 1-192. - Planned Unit Development (PUD) District regulations.

(a) Purpose. The intent of the Planned Unit Development (PUD) District is to provide a flexible, alternative Zoning procedure to encourage innovative design for the unified and planned development of large tracts of land. The PUD District is designed to allow the development of integral land use units, such as residential developments of mixed housing types, retail centers, office parks, light Industrial parks, or any appropriate combination of these uses, in a planned environment and developed and/or operated as a unified development. All PUD development approvals shall be valid for a period of not more than two (2) years from the date of approval unless a phasing plan is presented at the time of approval.

(b) Uses permitted subject to Planned Unit Development site plan. Deviation from the regulations established in this section applicable to particular uses may be permitted when the owner and developer demonstrate that adequate provisions have been made in the Planned Unit Development for sufficient light and air, that the density of the development is compatible with surrounding land uses, that pedestrian and vehicular traffic circulation systems are safe and efficient, that the development will progress in orderly phases, and that the public health, safety and general welfare will be protected. However, higher and more restrictive specific standards for use, density, height, lot area, setback, visual screens, landscaping, parking, sign control and open space may be adopted as part of the development site plan by a PUD District amending Ordinance.

Sec. 1-193. – Downtown District (DD) regulations.

(a) *Purpose*. The Downtown (DD) District is intended to allow the development of a town center (a mixed use traditional small town core) as outlined in the City comprehensive plan. The District will incorporate existing Commercial and institutional uses at the heart of the new

town area and accommodate a variety of future neighborhood retail and community services, as well as housing. To ensure that future Commercial development is consistent with the town center concept and does not detract from residential development within the District, site plan reviews are required for all Commercial uses conditionally permitted in the District.

(b) *Uses permitted by right.* In the Downtown (DD) District, no building or land shall be used and no building erected except for one or more of the following specified uses, unless otherwise provided in this division:

(1) Single-family, detached dwellings on single lots;

(2) Single-family townhouses on separate lots;

(3) Safety services; and

(4) Parks and recreational facilities (public).

(5) Thrift shops and/or secondhand stores;

(c) *Special uses.*

(1) The following uses of land and structures are permitted in this District if they meet the supplementary use standards outlined in section 1-225.

a. School;

b. Convenience retail;

c. Home occupations; and

d. Hospital.

(2) *Special use permits.* The following uses of land and structure are permitted in this District if they are approved in the process outlined in section 1-283:

a. Temporary use stands, such as fruit or vegetable stands, hot dog or taco stands, snow cone shacks, and other establishments of a similar nature. Exceptions may be permitted for special events (e.g., carnivals, parades, etc.), but such exceptions shall be for a maximum period of seventy two (72) hours (three operational days).

b. Animal shelters or veterinary offices housing animals outdoors, kennels, stables, or any other use that keeps animals outdoors; and

c. Automobile repair – new and used parts and service, enclosed (not salvage yards or similar).

d. Multi-Family dwellings;

e. Eating and drinking places;

f. Retail (including grocery stores and large-scale retail establishments);

g. Office;

h. Place of worship;

i. Day care center; and

j. Library; and

k. Public House.

(d) *Prohibited uses.* The following uses of land and structure are expressly prohibited in this District:

(1) Gambling halls, parlors, or other establishments for gaming (including 8-liners, card tables, slot machines for prizes, etc.);

(2) Retail liquor establishments, except grocery stores;

(3) Private clubs;

(4) Tattoo parlors and body piercing establishments;

(5) Palm readers, palmistry shops, psychics, and tarot card readers;

(6) Smoking Paraphernalia establishments or any other kind of associated paraphernalia retail outlets;

(7) Stores or shops where tobacco sales account for more than fifty percent (50%) of the retail sales;

(8) Outdoor storage, mini-storage, self-storage, or facilities requiring the storage of goods or equipment outside (e.g., truck or van rentals, heavy equipment rentals, outdoor nurseries, etc.); Automobile repair facilities, auto parts retail or wholesale facilities, tire repair or replacement facilities, and other automotive related establishments, including express lube shops;

(9) Pawnshops or shops containing remaindered goods;

(10) Check cashing, title loan, short term loan, or payday loan offices;

(11) Other uses not conducive to the orderly and attractive function of the main street area of the City. These uses include those that affect the health, safety, and welfare, offend the morals and values, or create a nuisance to the community. The City Council shall give a reasoned determination for the prohibition of any proposed use which must be approved by a unanimous vote of all Council members.

This prohibition does not imply that these uses will be allowed in other Districts.

(e) *Permitted accessory uses.* The following are permitted accessory uses:

(1) Those accessory uses permitted under section 1-226;

(2) Any structural or mechanical use customarily incidental to the permitted use; and

(3) Off-street parking attributable to the permitted use.

Sec. 1-194. – Manufactured Housing (MH) District regulations.

(a) Purpose. The Manufactured Home District is the only District in which a Manufactured Home may be placed, with the exception of the placement of a Manufactured Home or Recreational Vehicle provided by any governmental agency as temporary housing following

any public disaster or calamity or for hardship situations including the construction, remediation, or remodeling of a residence, as determined by the City Council, designated as a homestead for a period of time not to exceed six (6) months as approved by the City Council. The City Council may grant one additional extension for no more than six (6) months. Manufactured Homes will be allowed as a matter of right in this zoning district, subject to all other applicable Zoning standards in the Ordinance and City Code requirements. Manufactured Homes are not permitted in other Zoning Districts and in order to allow for a broad range of housing types the Manufactured Home District provides the ability to construct and operate Manufactured Home parks and Manufactured Home Subdivisions. Manufactured Home parks will meet the need for well-designed and operated areas for the leasing or temporary placement of Manufactured Homes. The Manufactured Home Subdivision will allow for the design, construction and sale of lots specifically designed for manufactured housing units which will be permanently affixed to the ground by permanent foundations and connected to public utility services in a like manner as conventionally on-site constructed homes.

(b) *Uses permitted by right.* In the MH Manufactured Home District, no building or land shall be used and no building shall be hereafter erected, reconstructed, altered or enlarged, unless otherwise provided in this Ordinance, except for one (1) or more of the following uses:

(1) Manufactured Homes and Manufactured Home parks;

(2) Single-family detached dwellings on single lots;

(3) Place of worship;

(4) Safety services;

(5) Parks and recreational facilities; and

(6) Group Homes.

(c) *Special uses.* The following uses of land and structure are special uses in this District and must meet the supplementary use standards outlined in section 1-225.

(1) School;

(2) Home occupation; and

(3) Library.

(d) *Permitted accessory uses*. The following are permitted accessory uses:

(1) Those accessory uses permitted under section 1-226;

(2) Any structural or mechanical use customarily incidental to the permitted use; and

(3) Off-street parking attributable to the permitted use.

Sec. 1-195. - Land use types summarized on land use table.

Purpose. The use table of this section provides a tabular summary of the land use types permitted within each Zoning District. The table is intended for reference only and does not necessarily reflect all of the regulations that may apply to a particular use or Zoning District. In the event of conflict between the use table and the regulations found within the individual District sections of this article

(sections 1-186 through 1-194), the more restrictive of the individual District regulations shall control.

(1) *Permitted by right.* Uses identified with a "P" are permitted by right and shall be permitted in the corresponding District subject to all other applicable Zoning standards in this Ordinance and City Code requirements.

(2) *Special use.* Uses identified with an "SU" are permitted shall be permitted in the corresponding District only in compliance with the supplementary use standards referenced and identified in section 1-225 and subject to all applicable Zoning standards in this Ordinance and City Code requirements. These uses require Planning and Zoning Commission recommendation and City Council approval.

(3) *Not permitted.* Uses not identified in a particular District column of the use table as permitted by right are not allowed in such District ("NP") unless otherwise expressly permitted by other regulations of this Ordinance.

(4) *Special Use Permit*. Uses identified with an "SUP" are not permitted by right but shall be permitted in the corresponding District only in compliance with the supplementary use standards referenced and identified in section 1-283 and subject to all applicable Zoning standards in this Ordinance and City Code requirements. These uses require Planning and Zoning Commission recommendation and City Council approval.

Sec. 1-196. - Land use categories table.

Land Use	R1	R2	Commercial	Multi-Family	Industrial	Planned Unit Development	Community Facilities	Downtown District	Manufactured Housing
Residential									
Single-family	P	P	SUP	P	NP	PUD	NP	P	P
Multi-Family	NP	NP	NP	P	NP	PUD	NP	SUP	NP
Manufactured Housing	NP	NP	NP	NP	NP	NP	NP	NP	P
Home Occupations	SU	SU	SU	SU	NP	SU	NP	SU	SU
Commercial									
Eating and drinking places	NP	NP	P	NP	NP	PUD	SU	SUP	NP
Public House	NP	NP	SUP	NP	NP	PUD	NP	SUP	NP
Retail	NP	NP	P	NP	SU	PUD	NP	SUP	NP
Convenience retail	NP	NP	P	NP	NP	PUD	NP	SU	NP
Office	NP	NP	P	NP	NP	PUD	NP	SUP	NP
RV park	NP	NP	NP	NP	NP	NP	NP	NP	P
Automobile repair (parts and service)	NP	NP	SUP	NP	P	PUD	NP	SU	NP
Automobile sales	NP	NP	P	NP	P	PUD	NP	NP	NP
Automobile wrecking yard	NP	NP	NP	NP	P	PUD	NP	NP	NP
Private Kennels/stables	SUP	NP	SUP	NP	NP	PUD	NP	SU	NP
Industrial									
Heavy Industrial	NP	NP	NP	NP	SU	NP	NP	NP	NP
Light Industrial	NP	NP	NP	NP	P	NP	NP	NP	NP
Pawn Shops	NP	NP	NP	NP	P	NP	NP	NP	NP
Sexually Oriented Business	NP	NP	NP	NP	SU	NP	NP	NP	NP
Civic and institutional uses									
Place of worship	SU	P	P	SU	NP	PUD	SU	SUP	P

School	**SU**	**SU**	**SU**	**SU**	**NP**	**PUD**	**SU**	**SU**	**SU**
Day care center	**SU**	**NP**	**P**	**SU**	**NP**	**PUD**	**NP**	**SUP**	**NP**
Art Gallery or Museum	**NP**	**NP**	**P**	**NP**	**SU**	**PUD**	**SU**	**SU**	**NP**
Safety Services	**P**	**P**	**P**	**P**	**SU**	**PUD**	**P**	**P**	**P**
Hospital	**SU**	**NP**	**SU**	**SU**	**NP**	**PUD**	**SU**	**SU**	**NP**
Group Homes	**P**	**P**	**NP**	**P**	**NP**	**PUD**	**NP**	**NP**	**P**
Library	**SU**	**SU**	**SU**	**SU**	**NP**	**PUD**	**SU**	**SUP**	**SU**
Public Parks and Recreation (private/public)	**SUP /P**	**P**	**P**	**P**	**NP**	**PUD**	**P**	**N/P**	**P**
Other									
Agriculture	**P**	**NP**	**NP**	**NP**	**NP**	**NP**	**NP**	**NP**	**NP**

Legend	**Designation**
Permitted (1)	P
Not Permitted (2)	NP
Special Use (3)	SU
Planned Unit Development (4)	PUD
Permitted with Special Use Permit (5)	SUP

1—Uses permitted by right if Zoning requirements are met.
2—Uses not permitted in this Zoning District.
3—Uses permitted by right if special use standards are met.
4—See PUD section.
5 – Uses Permitted with Special Use Permit

Sections. 1-197—1-224. - Reserved.

ARTICLE IV. - SPECIAL USE REGULATIONS

Sec. 1-225. - Supplementary use standards.
Sec. 1-226. - Accessory uses and structures.
Sec. 1-227. - Planned Unit Developments (PUD).
Sec. 1-228. - Towers
Secs. 1-229—1-247. - Reserved.

Sec. 1-225. - Supplementary use standards.

No permit shall be issued for any development or use of land unless the activity is in compliance with all applicable supplementary use standards in this section. Unless otherwise indicated, the listed standards apply in all Zoning Districts in which the subject use is permitted.

(a) Places of worship. Places of worship shall not be allowed in the R1 Zoning District unless direct vehicle access is provided from a collector or arterial street or major thoroughfare. This standard shall not apply to places of worship located in the C Zoning District.

(b) School. Schools shall not be allowed in the R1 or R2 Zoning District unless direct vehicle access is provided from a collector or arterial street or major thoroughfare. This standard shall not apply to schools located in the C Zoning District.

(c) Hospital. Hospitals shall not be allowed in the R1 Zoning District unless direct vehicle access is provided from a collector or arterial street or major thoroughfare. This standard shall not apply to hospitals located in the C Zoning District.

(d) Library. Libraries shall not be allowed in the R1 Zoning District unless direct vehicle access is provided from a collector or arterial street or major thoroughfare. This standard shall not apply to libraries located in the C Zoning District.

(e) Home occupations. All home occupations shall comply with the following standards:

a. There shall be no visible storage of equipment, materials, or vehicles that have more than two (2) axles;

b. The home occupation shall be conducted entirely within the principal residential building or within a permitted accessory structure, and shall not be conducted within a garage or modified garage area;

c. No signage shall be permitted indicating the existence of any home occupation;

d. No retail sales of products not produced as a result of the home occupation shall be allowed;

e. No equipment shall be used that creates undue noise, vibration, electrical interference, smoke, or particulate matter emissions, excessive power demands or odors;

f. No goods, chattels, materials, supplies, or items of any kind shall be delivered either to or from the premises in connection with the home occupation in vehicles with more than two (2) axles;

g. No persons other than the immediate family residing at the home may work at the home occupation;

h. No more than two (2) private automobiles of clients, patrons, or customers of the home occupation can be parked off the premises at any given time. Off-street parking shall be provided (driveway parking spaces may be counted towards meeting this requirement);

i. The following are expressly prohibited as home occupations and must be located in an appropriate Commercial or office area:

i. Doctor's or dentist's offices;

ii. Real Estate offices;

iii. Insurance offices;

iv. Retail operations;

v. Storage facilities;

vi. Auto repair;

vii. Beauty shops;

viii. Barbershops;

ix. Nail salons;

x. Hair salons;

xi. Tattoo or body piercing establishments; or

xii. Any other business that is disruptive of the quiet use and enjoyment of surrounding property owners.

(f) Sexually Oriented Businesses.

a. *Purpose*. It is the purpose of this subsection to regulate Sexually Oriented Businesses to promote the health, safety, morals, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the concentration of Sexually Oriented Businesses within the City. The provisions of this subsection 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 not the intent, nor effect of this subsection 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.

b. *Applicability*. This subsection shall apply to 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; or

3. The addition of any Sexually Oriented Business to any other existing Sexually Oriented Business.

c. In no event shall usage of land or structures for Sexually Oriented Businesses be approved unless they meet the following supplementary use standards:

1. A Sexually Oriented Business shall be located at least one thousand feet (1000') from a place of worship, a school, a child care facility, the boundary of a residential area, a public park, the property line of a lot devoted to residential uses, any building or structure in which alcoholic beverages are offered for sale, a hospital, public library, a recreational center, a public swimming pool, the boundary or any area zoned R1, C, R2, or another Sexually Oriented Business. Measurements for purposes of this subsection shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as part of the premises where a Sexually Oriented Business is conducted, to the nearest property line of the church, school, day care center, or to the nearest boundary of an affected property line, public park, District, or to the closest exterior wall of another Sexually Oriented Business.

2. A Sexually Oriented Business lawfully operating under the terms of this subsection is not rendered in violation of this subsection by the subsequent location of a church, public or private elementary or secondary school, day care center, Public Park, area subsequently zoned R1 or R2, or subsequently put to residential use.

(g) Heavy industry. Heavy industry shall not be allowed in the I District unless it provides a minimum forty foot (40') buffer strip along any parcel lines that adjoin a R1 or R2 District or as part of a condition imposed for a Special Use Permit under section 1-283.

(h) Manufactured Homes. In all other districts other than the Manufactured Housing District (MH), replacement of a HUD manufactured home, other than in case of replacement as a result of fire or natural disaster, is limited to a single replacement.

Sec. 1-226. - Accessory uses and structures.

Principal uses classified as permitted uses by the District regulations of this article shall be deemed to include accessory uses and activities that are customarily associated with, and appropriate, incidental and subordinate to, permitted uses. Accessory uses and activities shall be subject to the same regulations as principal uses unless otherwise stated.

(1) *Accessory buildings.* All accessory buildings shall not exceed twelve feet (12') in height and must be within building line setbacks as outlined above.

(2) *Containers.* Steel shipping containers are not permitted as permanent storage sheds in any District except R1 and I. Steel shipping containers are not permitted for residential use for any District. Permissible containers are designed for temporary, residential use only and shall be set on the ground (no wheeled storage is allowed). Temporary location of such containers may be allowed for not more than six (6) months. City staff shall review applications for the use and location of such structures.

(3) *Residential accessory uses.* Residential accessory uses shall include, but not be limited to, the following accessory uses, activities and structures:

a. Fences and walls (see section 1-166(c));

b. Garages, carports and off-street parking areas (garages, carports, and off-street parking areas not attached to the main residence shall be of the same architectural facade and building style, materiality, and proportions as the main residence structure and shall be used for storage only);

c. Gates and guard houses;

d. Home occupations, subject to the standards of section 1-225;

e. Playhouses, patios, cabanas, porches, gazebos and incidental household storage buildings;

f. Garage or in-law type apartments (such apartments shall not receive separate utility connections, including electric, telephone, cable, data, water, sewer, gas, etc, but shall be dependent on the principal use for connection to these services. Further, no address will be available for these accessory structures or uses);

g. Radio and television receiving antennas and support structures, except ham radio towers;

h. Recreational facilities for the use of residents;

i. Keeping of domestic animals for non-commercial purposes;

j. Solar energy systems; and

k. Other necessary and customary uses determined by the Chief Building Official or City Administrator to be appropriate, incidental and subordinate to the principal use on the lot.

(4) *Retail, Commercial, office, and Industrial accessory uses.* Retail, Commercial, office, and Industrial accessory uses shall include, but not be limited to, the following accessory uses, activities and structures:

a. Fences and walls;

b. Gates and guard houses;

c. Dwelling units for security or maintenance personnel;

d. Parking garages and off-street parking areas;

e. Radio and television receiving antennas and support structures;

f. On-premises signs;

g. Solar energy systems; and

h. Other necessary and customary uses determined by the Chief Building Official or City Administrator to be appropriate, incidental and subordinate to the principal use on the lot.

(5) *Model homes.*

a. Notwithstanding any provision of this article, model homes may be constructed in a residential Subdivision after approval of the final plat and installation of all

required improvements, subject to certain conditions. For the purposes of this article, the term "model home" shall be defined as a dwelling unit used initially for display purposes which typifies the type of units that will be constructed in the Subdivision and which will not be permanently occupied during its use as a model.

b. Each Subdivision shall be limited to one (1) model home per twenty (20) platted and approved lots in the Subdivision or a maximum of four (4) model homes per development. Lots planned for future phases of development shall not be considered as platted lots. New model homes may be permitted and constructed following the sale of existing model homes.

c. Construction of model homes may begin upon completion of all public improvements in the Subdivision. The model home may only be occupied for sales and display purposes upon completion of the street leading to the model home and for fifty feet (50') thereafter.

d. The model home shall be used only for selling new homes within the Subdivision where the office has been established. The model homes will not be inhabited as dwellings and will only be used for display and sales purposes until after installation and acceptance of all required improvements in the Subdivision.

e. All installations related to the sales activity (e.g., canopies, partition walls, signage, fencing, lighting, temporary parking and similar improvements) shall be converted to the approved residential use prior to occupancy as a residential structure. If the carport or garage has been converted to office space, it must be returned to a condition suitable for the parking of automobiles.

f. Applicant shall post a five thousand dollar ($5,000.00) bond, refundable deposit, or other form of surety per model home to guarantee conversion of any office/display area to the approved residential use and for removal of any exterior items such as temporary parking, fencing, lighting and signage.

g. Applicant shall make application for a model home building permit which shall be subject to all applicable building, Subdivision, Zoning and all other codes in the same manner as any other residence. It shall also comply with all deed restrictions, drainage, and other construction plans of the given Subdivision.

h. Model home permits shall be valid for no longer than three (3) years or eighty percent (80%) development build out. Applicant may file a request for an extension upon a showing that the model home is still needed.

i. The application for a model home permit shall include a Statement in a form approved by the City attorney and signed by the applicant in which the applicant agrees to indemnify and hold harmless the City, its employees, agents, representatives, and elected and appointed officials from any and all claims made against them arising from the construction and occupancy of the model home prior to construction of all required improvements and filing of the final plat.

j. Granting a model home permit in no way obligates the City to supply any utility or access to any model home until such utilities and roadways have been constructed and accepted by the City.

(6) *Temporary sales trailers.* Temporary sales trailers are permitted in residential developments prior to the construction of a model home. Following the installation of the model home, temporary sales trailers shall be removed from the site. Temporary sales trailers may be permitted based on the following requirements being met:

a. *Site plan.* A site plan indicating required parking, building location, required utilities, and other similar site features shall be submitted.

b. *Landscaping required.* Landscaping shall be installed in conformance with the landscaping requirements as indicated in section 1-165. A landscaping plan shall be submitted indicating the proposed layout of plantings and their maintenance.

c. *Utilities required.* Temporary sales trailers shall be supplied with all utilities, to include water, sewer, electricity, and telephone in order to facilitate the proper function of the trailer.

d. Restroom facilities are required within the trailer.

e. *Americans with Disabilities Act (ADA) compliance.* Temporary sales trailers shall meet all requirements of the ADA, including providing access ramps and accessible restroom facilities.

f. *Structural requirements.* All trailers shall be built to the requirements of the City Engineer and Chief Building Official with respect to foundation, site placement, natural hazards mitigation, floodplain, and other requirements as necessary to ensure the safe conduct of business in the temporary sales trailer.

g. *Permit required.* A temporary use permit shall be required. Permits shall be granted following review of staff and approval by the Planning and Zoning Commission and City Council. Permits shall be effective for a twelve (12) month period from the date of approval. No sales or other operation shall be allowed prior to approval. Following the permit period or construction of a model home, the sales trailer shall be removed from the site. The sales trailer shall not be used for any other purpose than general, site-specific sales and construction oversight and management. A twelve (12) month extension may be granted by the Planning and Zoning Commission and City Council.

Sec. 1-227. - Planned Unit Developments (PUD).

(a) Purpose. It is the general purpose of the PUD District classification to:

(1) Encourage enhancement and preservation of lands which are unique or of outstanding scenic, environmental, cultural and historical significance;

(2) Provide an alternative for more efficient use of land, resulting in smaller networks of utilities, safer network of streets, promoting greater opportunities for public and private open space, and resulting in lower construction and maintenance costs to the general public;

(3) Encourage harmonious and coordinated development of the site, considering the natural features, community facilities, pedestrian and vehicular circulation in conformance with the thoroughfare plan, and land use relationship with surrounding properties and the general area; and

(4) Require the application of professional planning and design techniques to achieve overall coordinated development, eliminating the negative impacts of unplanned and piecemeal development likely to result from rigid adherence to the Zoning classifications and standards found elsewhere in this article.

(b) Eligibility. The foregoing general purposes and comprehensive plan elements, along with such standards provided in this article, shall guide in the determination of eligibility for PUD application.

(c) PUD designation procedure. The process for the filing of an application, requirements for notice and advertisement of a PUD application and other related actions shall be the same as those provided for in the Zoning amendment process as described in section 1-279. In addition to the above, the applicant shall be governed by the following requirements:

(1) *Pre-application conference.* Prior to submitting an application for approval of a PUD, the applicant or representative shall confer with the Chief Building Official. The applicant is encouraged to submit a tentative land use sketch for review and to obtain any information on any projected plans, programs or other matters that may affect the proposed development. This information should include the:

a. Proper relationship between the proposed development and surrounding uses, and the effect of the plan upon the comprehensive plan of the City;

b. Adequacy of existing and proposed streets, utilities, and other public facilities and services within the proposed planned development;

c. Character, design and appropriateness of the proposed land uses and their adequacy to encourage desirable living conditions, to provide separations and screening between uses where desirable, and to preserve the natural amenities of streams, wooded areas, and similar natural features; and

d. Adequacy of open space and recreation areas, existing and proposed, to serve the needs of the development.

(2) *Submission of a preliminary PUD plan.* After the pre-application conference, a formal application for a PUD District may be made to the Planning and Zoning Commission in the same manner as an application for a Zoning amendment is made. Prior to the approval of such designation, the applicant shall submit a preliminary plan. The following information shall be included in the preliminary plan:

a. Ownership. All land included for purposes of development within a PUD District shall be owned by or be under the control of the applicant for such Zoning designation, whether the applicant is an individual, partnership, corporation, or group of individuals. The applicant shall present proof of the unified control of the entire area within the proposed PUD District.

b. Legal description of the site accompanied by a map at a scale suitable for reproduction for advertising for a Public Hearing.

c. Site conditions map or series of maps that shall indicate the following:

    1. Title of planned development and name of developer;

    2. Scale, date, north arrow, and general location map showing relationship of the site to external facilities such as highways;

    3. Boundary of the subject property;

    4. All existing streets, buildings, watercourses, easements, section lines, and other important features within the proposed project. The location and size, as appropriate, of all existing drainage, water, sewer, and other utility provisions, and information about existing vegetative cover.

d. Concept plan at the same scale as the above site conditions maps which shall indicate:

    1. Sketch plan for pedestrian and vehicular circulation showing the general locations and rights-of-way widths and the general design capacity of the system as well as access points to the major thoroughfare system;

    2. A general plan for the use of lands within the PUD. Such plans shall indicate the location, function and extent of all components or units of the plan, including low-, medium-, and high-density residential areas (indicating the proposed density for each category), open space provisions, community-serving recreation or leisure facilities, and areas for public or quasi-public institutional uses such as schools, places of worship and libraries;

    3. A statement indicating that proposed arrangements are made with the appropriate agencies for the provision of needed utilities to and within the planned development.

e. A report shall be prepared in conjunction with the above material and shall include:

    1. Total acreage involved in the project;

    2. The number of acres devoted to the various categories of land shown on the site development plan, along with the percentage of total acreage represented by each category of use and component of development, plus an itemized list of uses proposed for each of the components which shall be the range of uses permitted for that section of the planned development;

    3. The number and type of dwelling units involved for the overall site and for its components;

    4. A description of the projected service areas for nonresidential uses (e.g., neighborhood, community or regional);

5. A statement or map indicating which streets and roads (and pedestrian ways as appropriate) are proposed for public ownership and maintenance and whether approval will be sought for private roads, if any, within the development;

6. A statement or map on drainage which generally shows existing drainage conditions, wetlands, areas of frequent flooding, points of discharge from the project, and anticipated quantity of water generated from the development;

7. A statement which shall indicate the proposed method of governing the use, maintenance and continued protection of open space and community-serving facilities.

f. Development schedule. The development site plan shall be accompanied by a development schedule indicating the approximate date on which construction is expected to begin and the rate of anticipated development to completion. A development schedule, if adopted and approved by the City Council, shall become part of the development plan and shall be adhered to by the owner, developer, and all successors in interest. Upon the recommendation of the Planning and Zoning Commission and for good cause shown by the owner and developer, the City Council may extend the development schedule or adopt such new development schedule as may be supported by the facts and circumstances of the case.

(3) *Submission of a final PUD plan.* Before a building permit may be issued or before any development action on a proposed PUD may begin, the landowner shall submit a final plan to the Planning and Zoning Commission. The submission may be for all of the land included within a proposed PUD site or for a part of the site. The submission shall include all of the information prescribed in subsection (c)(2) of this section and shall additionally include specifications, covenants, easements, conditions, bonds, or other information required by the commission.

<u>Sec. 1-228. – Antennas and Towers.</u>

(a) Applicability

(1) *District height limitations.* The requirements set forth in this code shall govern the location of towers and antennas in the City.

(2) *Public property.* Antennas or towers located on publicly owned property shall be exempt from the requirements of this code, provided a license or lease authorizing the antenna or tower has been approved by the City Council.

(3) *Amateur radio and receive-only towers.* This code shall not govern any tower, or the installation of any antenna, that is under one hundred feet (100') in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively as a receive-only antenna.

(4) *Grandfathered towers and antennas.* Any tower or antenna existing on the effective date of this Ordinance shall not be required to meet the requirements of this code

other than the requirements of this code for grandfathered towers and antennas. Any towers or antennas that fail to meet the requirements of this code shall be referred to as "grandfathered towers" or "grandfathered antennas."

(b) *Guidelines and requirements*.

(1) *Purpose.* The purpose of this subchapter is to establish rules and regulations for the site placement and maintenance of towers and antennas of the type as herein defined and set out. The goals of this chapter are to encourage and to provide for the location of towers in nonresidential areas and minimize the total number of towers throughout the community, and to encourage strongly the joint use of new and existing towers. In addition, it is the purpose of these regulations to encourage the use of towers and antennas to be located in areas where the adverse impact on the community is minimal and to encourage the user of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas, and to enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively and efficiently.

(2) *Existing sites.* Each applicant for a tower permit shall provide the City Council an inventory of its existing towers, including specific information about the location, height and design of each tower. The City Council shall review the data and information as may be submitted, and all data submitted in conjunction with an application as herein provided shall be deemed a part of the open and public record.

(3) *Lighting.* The guidelines set forth in this code shall govern the location of all towers and the installation of all antennas; provided, however, that the governing body may in its sole discretion provide other regulations or other requirements that accomplish the objectives of this code where it is found that the goals and purposes of this chapter and this code are better served by such exceptions.

(4) *Requirements.* Towers shall either be constructed to maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted sky blue or gray so as to reduce visual obtrusiveness.

(5) *Design requirements.* At a tower site, the design of buildings and related structures shall, to the extent possible, use materials, colors, textures, screening and landscaping that will blend the tower facilities to the natural setting and built environment.

(c) *Installation of an antenna of a structure other than a tower*. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to or closely compatible with the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

(d) *Lighting of towers prohibited*. Towers shall not be artificially lighted unless required by the FAA or other applicable authority. If lighting is required, the City Council shall approve the design for lighting and the design must take into effect existing and contemplated uses of

surrounding property and be configured in a way as to cause the least disturbance to the surrounding views.

(e) *Federal and other governmental requirements*. All towers must meet or exceed current standards and regulations of the FAA, the FCC and any other agency of the federal government or any other governmental entity with the authority to regulate towers and antennas. If the standards and regulations are changed, then the owners of the towers and antennas governed by this code shall bring the towers and antennas into compliance with the revised standards and regulations within six (6) months of the effective date of the revised standards and regulations. Failure to bring towers and antennas into compliance with the revised standards and regulations shall constitute an immediate and automatic revocation of the authority granted under this chapter and the City may require the removal of any tower antenna in noncompliance at the cost of the owners.

(f) *Building codes; safety standards*. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in the Building Codes of the City and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. The City, through the Chief Building Official or other persons so designated, may inspect towers and antennas at any time, and if the Chief Building Official finds and concludes that the tower or an antenna fails to comply with such codes and standards and/or constitutes a danger to persons or property, then the Chief Building Official, upon notice being provided to the owner of the tower, may order that the tower and antenna be brought into compliance with the codes and standards within a period not to exceed thirty (30) days. If the owner fails to bring the tower into compliance within thirty (30) days, the City Council may order the removal of the tower and antennas at the expense of the owner. In the event a removal is ordered, the City shall not assume any liability for the removal and shall be entitled to a lien upon the personal property, fixtures or real estate for the purpose of paying its cost incurred in the removal.

(g) *Special Use Permit required*. The City Council finds and determines that it is in the best interest of the health, safety and well-being of the residents, citizens and inhabitants of the City that no tower or antenna shall be constructed, erected or maintained in the City unless a permit, hereinafter referred to as a tower permit, shall have first been issued by the City Council for the placement, location and maintenance of the tower and antenna.

(h) *Application and fees*. From time to time the City Council may adopt an application form or procedure for the issuance of a tower permit. In addition, the City Council may specify fees, costs and expenses that must be paid by the applicant as an application fee prior to the review or issuance of the tower permit. In the event the City Council shall fail to specify or provide for tower permit application or a procedure for the issuance of a tower permit, then the Chief Building Official is hereby directed to establish such procedure as shall be reasonable and necessary to accomplish the objectives of this code. The application fee approved by the City Council shall be in an amount sufficient to cover the cost incurred by the City in reviewing the application and material submitted by the applicant. In addition, prior to the issuance of any permit and as a condition for the issuance of a tower permit, the applicant shall pay any additional cost as may be incurred by the City, including but not limited to professional fees incurred in the review of any application.

(i) Requirements of an application. Each application filed hereunder shall show and attach thereto all relevant documents showing compliance with all laws and regulations promulgated by the federal government, including laws and regulations relating to the FAA or the FCC or any other governmental entity. In addition, no authority granted under this code shall be deemed to have any final authority until an application for a building permit has finally been approved by the Chief Building Official of the City.

(j) Shortened Administrative Process.

(1) The City Council recognizes that there are certain circumstances where a tower permit may be issued administratively by the Chief Building Official without review by the City Council, and in this regard the Chief Building Official is hereby directed and authorized to issue a tower permit as provided for under this chapter without referral to or review by the City Council. The applicant for a tower permit by administrative approval shall first comply with all other requirements of this code including making application on such form as may be from time to time provided by the City and paying the required fee. The authority herein granted to the Chief Building Official shall be deemed discretionary by the Chief Building Official and the Chief Building Official may decline to issue a tower permit administratively and may refer the application to the City Council for approval in accordance with the other provisions of this chapter.

(2) The Chief Building Official may approve a tower permit administratively if it is found that one or more of the following conditions or circumstances shall exist:

a. The proposed tower or antenna, including the placement of additional buildings or other supporting equipment used in connection with the tower or antenna, will be located in an Industrial or heavy Commercial District or area of town. An Industrial or heavy Commercial area is one that is separated from any platted lot of record that is in residential use or intended for residential use by at least one thousand feet (1,000') from the closest point of any lot platted or used for residential purposes or, in the case of non-platted property, one thousand feet (1,000') from any structure actually used for residential purposes. In measuring or determining any of the distances as herein provided, measurements should be taken from the closest point of the lot or structure to the base or structural point of the tower closest to the residential lot or residential structure.

b. The installation of an antenna is on an existing structure other than a tower (such as a building, sign, light pole, water tower or other free-standing nonresidential structure) that is at least fifty feet (50') in height or greater so long as the additional antenna adds no more than twenty feet (20') to the height of the existing structure.

c. The installation of an antenna is on an existing tower of any height so long as the addition of the antenna adds no more than twenty feet (20') to the height of the existing tower. The tower permit issued under this section shall

not permit the placement of additional buildings or other supporting equipment used in connection with the antenna.

(k) *General requirements for approval of an antenna tower or structure and the issuance of a tower permit.* The following general provisions shall govern the issuance of a tower permit and shall control all applications for a tower permit. Each applicant requesting a tower permit under this code shall submit a scaled site plan and a scaled elevation view and other supporting drawings, calculations, or other documentation signed and sealed by appropriate professional engineers showing the location and dimensions of the improvement, including information concerning topography, radio frequency coverage, tower height requirements, setbacks, drives, parking, fencing, landscaping, adjacent uses, and other information necessary to assess compliance with this code, including such other and additional information as may be deemed necessary and required by the City Council.

(l) *Factors in considering the granting of the permit.* The City Council shall consider the following factors in determining whether or not to issue a tower permit and such other factors as may be deemed appropriate and necessary in order to determine that the goals of the code are properly served:

(1) Height of the proposed tower;

(2) Proximity of the tower to residential structures and residential Districts; however, the City Council shall not approve any tower which is closer than one thousand feet (1,000') to any lot platted for residential use or from any structure in residential use;

(3) Nature of uses on adjacent and nearby properties;

(4) Surrounding topography;

(5) Surrounding tree coverage and foliage;

(6) Design of the tower with particular reference to design characteristics that have the effect of reducing or eliminating visual obstructions;

(7) The availability of suitable and existing towers and other structures presently constructed which are suitable for antenna location; and

(8) The environmental effects of radio frequency emissions to the extent that such facilities comply with the FCC regulations concerning such emissions shall not be considered.

(m) *Availability of suitable towers or other structures*. No new tower permit shall be issued unless the applicant demonstrates to the reasonable satisfaction of the City Council that no existing tower or structure can accommodate the applicant's proposed antenna. Evidence submitted to demonstrate that no existing tower or structure can accommodate the applicant's proposed antenna or tower may consist of any of the following.

(1) No existing towers or structures are located within the geographic area required to meet applicant's Engineer's requirements;

(2) Existing towers or structures are not of sufficient height to meet applicant's Engineer's requirements;

(3) Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment;

(4) The applicant's proposed antenna would cause electromagnetic interference with the antennas on the existing towers or structures or the antennas on the existing towers or structures would cause interference with the applicant's proposed antenna;

(5) The fees or costs required to share an existing antenna or structure which will be paid at the beginning of a sharing relationship or will be paid within one (1) year from the date of the inception of any sharing relationship exceed the cost of constructing a new tower;

(6) Property owner(s) of existing towers or structures are unwilling to accommodate reasonably the applicant's needs. The applicant must specify the reason for property owner(s) refusing to accommodate and submit satisfactory proof of non-accommodation, including documents evidencing appropriate financial tenders.

(7) The applicants demonstrate that there are other limiting factors that render existing towers and structures unsuitable.

(n) Setbacks. The following setbacks and separation requirements shall apply to all towers and antennas for which a tower permit is required; provided, however, that the governing body may, in its discretion, provide for other or different regulations if it finds that the goals of this code are better served by such modifications.

(1) Towers must be set back a distance equal to two hundred feet (200’) from the nearest point to any lot platted for residential use or any structure in residential use. If the height of the antenna tower is deemed to be greater than five hundred feet (500’), then the setback as herein provided shall be three (3) times the height of the tower.

(2) Towers, guys and accessory facilities must be constructed in a way to avoid adverse impact upon adjoining properties and the uses thereof. In addition, all such structures and apparatus must be properly screened by a visual barrier or fence of a height not less than eight feet (8’) and shall be appropriately marked.

(3) In all areas other than Industrial and heavy Commercial areas which are separated from lots platted for residential use or from structures in residential use by more than one thousand feet (1,000’), towers over ninety feet (90’) in height shall not be located within one-quarter (1/4) mile from an existing tower that is over ninety feet (90’) in height.

(o) Security. In addition to the fencing requirements as herein set out, all fencing shall be locked and secured and shall be equipped with appropriate anti-climbing devices; provided, that if

the City Council finds and determines that, because of natural barriers or the existence of other apparatus or conditions, this requirement is not necessary, the City Council may in an appropriate case modify the screening and fencing requirements as herein set out.

(p) Landscaping.

(1) All towers constructed and maintained within the City limits shall be landscaped and maintained in accordance with the provisions as herein set out. The City Council, however, upon appropriate application, may modify the provisions of this code when it is deemed appropriate in accordance with the circumstances and conditions then existing.

(2) The requirements as herein provided are:

a. Tower facilities shall be landscaped with a buffer of plant materials that effectively screen the view of the tower compound. The standard buffer shall consist of a landscaped strip at least four feet (4') wide outside the perimeter of the compound. The applicant for a tower permit shall file with the City a landscape plan which shall be approved by the City Council in conjunction with any application filed in accordance herewith. In the case of an application for administrative approval, the requirements for a landscape plan may be approved by the Chief Building Official without City Council approval if a request for administrative approval is granted. It shall be the duty of the applicant to fully maintain any landscaping as herein provided as a condition for the maintenance of the permit; and

b. Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural growth around the property perimeter may be deemed by the City Council to be a sufficient buffer.

(q) Removal of abandoned towers and antennas. Any antenna or tower that is not operated for a continuous period of twelve (12) months shall be deemed abandoned, and the owner of the antenna or tower shall remove the same within thirty (30) days of the receipt of a notice from the City Council notifying the owner of the abandonment. If the antenna or tower is not removed within the required thirty (30) days, or such additional period as may be allowed by the City Council upon application, the City Council may remove the antenna or tower at the expense of the owner and may file a lien upon the real estate and any personal property or fixtures found to pay the cost of removal.

(r) Existing antennas and towers.

(1) Any antenna or tower that would otherwise be subject to regulation under the terms and provisions of this code that had been constructed and lawfully in existence at the date of adoption of this chapter shall be deemed grandfathered and shall not be subject to the regulations provided under this code for the issuance of a tower permit. However, all other provisions of this code applicable to the

maintenance or renovation of an antenna or tower shall be deemed applicable and in existence.

(2) The owner of a previously existing antenna tower shall be entitled to grandfathered status only if the owner and/or lessee of the antenna or tower shall file a declaration and claim of grandfathered status on or before the expiration of six (6) months from the date of adoption of this chapter. Any person failing to timely claim grandfathered status shall be required as a condition of the maintenance of an antenna or tower to obtain a tower permit as herein required for a newly constructed antenna or tower.

(s) Applicant shall acquire no vested rights.

(1) No applicant for a tower permit or person intending to apply for a tower permit shall at any time acquire any vested rights to a tower permit or other authority or privilege to maintain an antenna or tower in the City limits. Nor shall any person who shall have previously constructed and maintained an antenna or tower otherwise subject to regulation under this chapter be deemed to have acquired any vested rights or property rights to maintain the tower or antenna in the City.

(2) The City declares that the provisions of this chapter are necessary for the preservation of the health, safety and well-being of the residents, citizens and inhabitants of the City and as such the health, safety and well-being of the residents, citizens and inhabitants of the City require that this chapter and code be enforced to the maximum extent permitted by law and that all rights of property shall at all times be subordinate to the regulations as herein set out.

(t) Regulations to the extraterritorial jurisdiction. The City Council finds and determines that its regulation of antennas and towers is important for the maintenance of the health, safety and well-being of the residents, citizens and inhabitants of the City and, as such, declares that the regulations contained in this chapter and code shall, to the extent that may from time to time be permitted under the laws of the State, be applicable to all towers and antennas that may be permitted and constructed in the extraterritorial jurisdiction of the City.

Secs. 1-229—1-276. - Reserved.

ARTICLE V. - ADMINISTRATION AND PROCEDURES

Sec. 1-277. - Decision-making bodies and officials.
Sec. 1-278. - Notice of Public Hearings.
Sec. 1-279. - Amendments.
Sec. 1-280. - Variances.
Sec. 1-281. - Variance permit criteria.
Sec. 1-282. - Effect of variance permit.
Sec. 1-283. - Special Use Permits.
Secs. 1-284—1-314. - Reserved.

Sec. 1-277. - Decision-making bodies and officials.

The City decision-making bodies and officials described in this section, without limitation upon the authority each possesses by law, have responsibility for implementing and administering this Ordinance in the manner described in this section.

(a) *Planning and Zoning Commission.* For the purposes of this Ordinance, the Planning and Zoning Commission shall exercise the following powers and be required to:

(1) Review and recommend to the City Council changes in Zoning; and

(2) Perform such other functions and duties as authorized in this Code and as may be duly delegated to them by the City Council.

(b) *Board of Adjustment.* For the purpose of this Ordinance, there is hereby created a Board of Adjustment consisting of five members each appointed by the City Council. The Board of Adjustment shall exercise the following powers and be required to:

(1) Hear and decide appeals where it is alleged that there is an error in any order or decision by City officials in the administration and enforcement of this Ordinance;

(2) Hear and decide appeals of any interpretation of the text of this Ordinance made by the Chief Building Official or City Administrator pursuant to section 1-127 and subsection (3) of this section; and

(3) Hear and decide requests for variances from the terms of this Ordinance pursuant to the procedures and standards of section 1-280.

(c) *Offices of the Chief Building Official and City Administrator.* For the purposes of this Ordinance, the Chief Building Official or City Administrator shall exercise the following powers and be required to:

(1) Make recommendations and provide assistance to the City Council, Planning and Zoning Commission and Board of Adjustment;

(2) Render administrative decisions on appropriate development applications; and

(3) Render administrative interpretations of the text and Zoning maps in this Ordinance pursuant to the procedures and standards in section 1-127 and this section.

Sec. 1-278. - Notice of Public Hearings.

(a) *Manner of conveyance or delivery.* Public notice of hearings shall be given as follows:

(1) *Publication.* Whenever the provisions of this Ordinance require a Public Hearing before the Planning and Zoning Commission or the Board of Adjustment, notice of a Public Hearing on the application shall be published in a newspaper of general circulation in the City at least eleven (11) days before the Public Hearing. Whenever the provisions of this Ordinance require a Public Hearing before the City Council, notice of a Public Hearing on the application shall be published in a newspaper of general circulation in the City at least sixteen (16) days before the Public Hearing.

(2) *Mailing.* Notice of required Public Hearings shall also be sent by mail to all owners of land within two hundred feet (200') of the lot lines or within the same Subdivision of the land that is the subject of the application. Such notice shall be postmarked at least ten (10) days before the Planning and Zoning Commission or Board of Adjustment Public Hearing. If a hearing before the City Council is required, such notice shall be mailed and postmarked at least fifteen (15) days before the City Council Public Hearing. Owners of land shall be identified by reference to the most recent tax records, except that when land is owned by a condominium association, notice shall be given to the condominium association. Notice shall be deemed mailed by virtue of its deposit with the United States Postal Service, properly addressed with postage prepaid.

(3) *Posting.* Notice of required Public Hearings shall also be provided by way of a sign posted on the land that is the subject of the application. One sign shall be posted for each two hundred feet (200') of frontage along a public street, with a maximum of two (2) signs required per frontage. Signs shall be located so that the lettering is visible from the street. Where the land does not have frontage on a public street, signs shall be posted on the nearest public street with an attached notation indicating the location of the land subject to the application.

(b) Contents. The contents of public notice hearings shall include the following:

(1) *Publication and mailed notice.* Published and mailed notices shall provide at least the following information:

a. The general location of the land that is the subject of the application;

b. Its legal description and street address;

c. The substance of the application;

d. The time, date and location of the Public Hearing;

e. The time, date and place where the application may be inspected by the public; and

f. A statement that interested parties may appear at the Public Hearing and be heard with respect to the application.

(2) *Signs.* Required signs shall at least indicate the substance of the application; the time, date and location of the Public Hearing; and the contact point for additional information.

Sec. 1-279. - Amendments.

(a) *Purpose.* The purpose of this section is to provide a means for changing the text of this Ordinance or the District boundaries shown on the official Zoning map as necessary or for special use permits. Since this Ordinance represents the City's effort to provide for the orderly development of the community, no change shall be made in these regulations except to:

(1) Correct an error in the regulations or map;

(2) Recognize changed or changing conditions or circumstances in a particular locality or area; or

(3) Recognize a change in public plans or policies that affect the property.

(b) *Authority.* The City Council may, after recommendation of the Planning and Zoning Commission, adopt an Ordinance amending the text of this Ordinance or the boundaries of the official Zoning map upon compliance with the provisions of this section.

(c) Initiation. An application for an amendment to the official Zoning map may be proposed by the mayor, a member of the City Council, the City Administrator, the City Engineer or a qualified applicant for a proposed development. An amendment to the text of this Ordinance may be proposed by the mayor, a member of the City Council or the City Administrator.

(d) *Procedure.*

(1) Submission of application. A complete application shall be submitted to the City Administrator in a form established by the City, along with a nonrefundable fee that is established from time to time by the City Council to defray the actual cost of processing the application. No application shall be processed until the established fee has been paid and the application has been deemed complete by the City Administrator. No application fee shall be required when such amendment is being proposed by the mayor, a member of the City Council or the City Administrator.

(2) Review and recommendation by the City Administrator. After determining that the application is complete, the City Administrator shall prepare a staff report, which may include a recommendation for approval or disapproval based on the criteria in subsection (f) of this section. A copy of the staff report on a proposed amendment to the official Zoning map shall be mailed to the applicant at least five (5) days prior to the Public Hearing on the application.

(3) Recommendation by Planning and Zoning Commission. The Planning and Zoning Commission shall, after due notice, conduct a Public Hearing on the report, in accordance with V.T.C.A., Local Government Code ch. 211, or other applicable law. At the Public Hearing, the Planning and Zoning Commission shall consider the application, the staff report, the relevant support materials and public testimony given at the Public Hearing. After the close of the Public Hearing, the Planning and Zoning Commission shall prepare and deliver a report and recommendation to the City Council to approve or disapprove the proposed amendment based on the criteria in subsection (f) of this section.

(4) Action by City Council.

(e) *Public Hearing.* After receiving the final report of the Planning and Zoning Commission, the City Council shall, after due notice, conduct a Public Hearing on the proposed amendment. At the Public Hearing, the City Council shall consider the application, the staff report, the relevant support materials and public testimony given at the Public Hearing.

(f) *Amendment criteria.* The wisdom of amending the text of this Ordinance or the Zoning map is a matter committed to the sound legislative discretion of the City Council and is not

controlled by any one factor. In determining whether to adopt, adopt with modifications or disapprove the proposed amendment, the City Council shall consider the following factors:

(1) Consistency with Ordinance. Whether and the extent to which the proposed amendment would conflict with any portion of this Ordinance.

(2) Compatibility with surrounding area. Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land, and is the appropriate Zoning District for the land.

(3) Changed conditions. Whether and the extent to which there are changed conditions that require an amendment.

(4) Effect on natural environment. Whether and the extent to which the proposed amendment would not result in significantly adverse impacts on the natural environment including, but not limited to, water, air, noise, stormwater management, wildlife, vegetation, wetlands and the natural functioning of the environment.

(5) Community need. Whether and the extent to which the proposed amendment addresses a demonstrated community need.

(6) Comprehensive plan. Whether and the extent to which the proposed amendment is compatible with the vision set forth in the City's comprehensive plan and would result in a logical and orderly development pattern and not constitute spot Zoning.

(7) *Vote required for action.* Action to amend the text of this Ordinance or the official Zoning map shall require an affirmative vote of at least three (3) members (three-fifths (3/5)) of the City Council.

Sec. 1-280. - Variances.

(a) Purpose. Variances are deviations from the property development standards for the applicable Zoning District where development is proposed that would not be contrary to the public interest and, due to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship, and so that the spirit of this Ordinance is observed and substantial justice done. A variance cannot be requested for a change in land use.

(b) Authority. The Board of Adjustment, in accordance with the procedures, standards and limitations of this section, shall approve, approve with conditions, or disapprove an application for a variance permit after receiving a recommendation by the City Administrator.

(c) Initiation. An application for a variance permit shall be submitted by a qualified applicant.

(d) Procedure.

(1) *Submission of application.* A complete application for a variance permit shall be submitted to the City Administrator, along with a nonrefundable fee that is established from time to time by the City Council to defray the actual cost of processing the application. No application shall be processed until the established

fee has been paid and the application has been determined completed by the City Administrator.

(2) *Review and recommendation by City Administrator.* After determining that the application is complete, the City Administrator shall review the application and prepare a staff report, which may include a recommendation of approval, approval with conditions or disapproval based upon the criteria in section 1-281. A copy of the report shall be mailed to the applicant at least five (5) days prior to the Public Hearing on the application.

(3) *Public Hearing.* After due notice, the Board of Adjustment shall hold a Public Hearing on an application for a variance permit. At the Public Hearing the Board of Adjustment shall consider the application, the staff report, the relevant supporting materials and the public testimony given at the Public Hearing. After the close of the Public Hearing, the Board of Adjustment shall vote to approve, approve with conditions or disapprove the application for a variance permit pursuant to the criteria of section 1-281.

(4) *Notice of decision.* The City Administrator shall provide a copy of the decision to the applicant by mail within ten (10) days of the board's decision.

Sec. 1-281. – Variance permit criteria.

To approve an application for a variance permit, the Board of Adjustment shall make an affirmative finding that the following criteria are met:

(1) Special circumstances exist that are peculiar to the land or structure that are not applicable to other land or structures in the same Zoning District and are not merely financial;

(2) These special circumstances are not the result of the actions of the applicant;

(3) Literal interpretation and enforcement of the terms and provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other land in the same Zoning District, and would cause an unnecessary and undue hardship;

(4) Granting the variance is the minimum action that will make possible the use of the land or structure which is not contrary to the public interest, and which would carry out the spirit of this Ordinance and substantial justice;

(5) Granting the variance will not adversely affect adjacent land in a material way; and

(6) Granting the variance will be generally consistent with the purposes and intent of this Ordinance.

Sec. 1-282. - Effect of variance permit.

(a) *Generally.* Issuance of a variance permit shall authorize only the particular variation which is approved in the variance permit. A variance permit shall run with the land.

(b) *Time limit.* Unless otherwise specified in the variance permit, an application to commence construction of the improvements that were the subject of the variance permit request must be applied for and approved within twelve (12) months of the date of the approval of the variance permit, otherwise the variance permit shall automatically become null and

void. Permitted time frames do not change with successive owners. Upon written request, only one (1) extension of the twelve (12) month timeframe may be granted by the Board of Adjustment for a period not to exceed twelve (12) months for good cause shown.

Sec. 1-283. - Special Use Permits.

(a) The City Council may by Ordinance grant Special Use Permits in any District provided, however, that the special use is specifically authorized under this Ordinance. In granting a Special Use Permit, the City Council may impose conditions which shall be complied with by the owner or grantee before a certificate of occupancy may be issued by the building inspector, for use of the building on such property pursuant to such Special Use Permit and such conditions precedent to the granting of the certificate of occupancy.

(b) All requests for Special Use Permits shall first be presented to the Planning and Zoning Commission, which shall hold Public Hearings thereon and consider them in accordance with subsection (c) of this section, and then make a recommendation to the City Council which shall also hold Public Hearings and shall approve, disapprove or approve the special use with conditions.

(c) Special Use Permits may not be granted unless the Planning and Zoning Commission makes written findings based directly upon the particular evidence presented to it which support written conclusions that the granting of the Special Use Permit will not be materially detrimental or injurious to other property or improvements in the neighborhood in which the subject property is located, nor impair an adequate supply of light or air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public health, safety and well-being, or substantially diminish or impair property values within the neighborhood.

(d) Every Special Use Permit granted under these provisions shall be considered as an amendment to the Ordinance from which this Ordinance is derived as applicable to such property under consideration, but shall not be considered as a permanent change in Zoning. In the event the building, premises, or land uses under the Special Use Permit is voluntarily or involuntarily vacated or if the ownership is voluntarily or involuntarily transferred, or if such buildings, premises, or land is more than fifty percent (50%) destroyed by fire or other cause, the use of the same shall thereafter conform to the regulations of the original Zoning District of such property unless a new and separate Special Use Permit is granted for continuation of the use.

(e) No building, premises, or land used under a Special Use Permit may be enlarged, modified, structurally altered, or otherwise significantly changed unless a separate Special Use Permit is granted for such enlargement, modification, structural alteration, or change.

(f) The following shall be submitted in connection with all applications for a Special Use Permit:

(1) *Ownership affidavit.* A Statement of ownership and control of the subject property and a Statement describing the nature of the intended use shall be submitted.

(2) *Vicinity map.* A general location map indicating the approximate location of the subject parcel shall be submitted.

(3) *Context map.* Twenty (20) full-size, twenty four by thirty six inches (24” x 36”), copies of a context plan shall be submitted; additional copies may be required. The map shall include the existing features within two hundred feet (200’) of the proposed conditional use. Existing features include, but are not limited to, buildings, ingress and egress points, landscaping areas, pedestrian paths and property names.

(4) *Survey.* A survey prepared and stamped by a State registered land surveyor listing the metes and bounds legal description and the gross acreage within the subject parcel shall be submitted.

(5) *Compliance with the comprehensive plan.* A Statement indicating how the proposed development complies with the City's adopted comprehensive plan shall be submitted.

(6) *Site plan.* Twenty (20) full-size, twenty four inches by thirty six inches (24” x 36”), copies of the site plan are required to be submitted and shall be prepared and stamped by licensed and/or certified professionals including, but not limited to, architects, landscape architects, land planners, Engineers, surveyors, transportation Engineers or other professionals, deemed necessary by the City Administrator or his designee for detailed elements that should be included on the site plan.

(7) *Landscaping plan.* Twenty (20) full-size, twenty four inches by thirty six inches (24” x 36”), copies of a landscaping plan is required to be submitted and shall be prepared and stamped by a licensed landscape architect, indicating the location, spacing, types and sizes of landscaping elements, existing trees (in accordance with section 1-165), and showing compliance with the City's off-street parking requirements, the City's design guidelines and policies, and the requirements of the appropriate Zoning District.

(8) *Grading and drainage plan.* Twenty (20) full-size, twenty four inches by thirty six inches (24” x 36”), copies of a grading and drainage plan which indicates the proposed grading and techniques for controlling and discharging drainage shall be submitted.

(9) *Lighting plan.* A lighting plan shall be submitted which indicates the illumination of all interior areas and immediately adjoining streets showing the location, candlepower and type of lighting proposed. The lighting plan shall be in conformance with all applicable lighting standards of Fort Bend County.

(10) *Elevations.* Twenty (20) full-size, twenty four inches by thirty six inches (24” x 36”), copies of elevations of all buildings, fences and other structures viewed from all sides indicating height of structures, the average finished grade of the site at the foundation area of all structures, percentage of building materials proposed, and color of all materials shall be submitted.

(11) *Signage plan.* The Planning and Zoning Commission shall approve an overall signage plan during the specific use approval process. All information to be

provided for the sign permit shall be submitted concurrent with the site plan application materials.

(12) *Traffic impact study.* A traffic impact study, completed by a certified traffic Engineer, may be required if it is estimated by the City Engineer that the project could generate trips for any given time period in excess of five percent (5%) of the existing volume of traffic on adjacent street systems.

(13) *Public notice.* Stamped and addressed business size envelopes (which do not include return addresses) to all owners of property located within three hundred feet (300') of the boundary of the proposed conditional use, as listed in the current county records, shall be submitted.

Sections. 1-284—1-314. - Reserved.

ARTICLE VI. - NONCONFORMITIES

Sec. 1-315. - General purpose; authority; maintenance and repair.
Sec. 1-316. - Nonconforming uses—Abandonment.
Sec. 1-317. - Same—Movement, alteration and enlargement.
Sec. 1-318. - Nonconforming structures; movement, alteration and enlargement.
Sec. 1-319. - Nonconforming accessory uses and nonconforming accessory structures.
Sec. 1-320. - Determination of nonconforming use and nonconforming structure status.
Secs. 1-321—1-343. - Reserved.

Sec. 1-315. - General purpose; authority; maintenance and repair.

(a) Purpose and scope of regulations. This article regulates the continued existence of:

(1) Uses established prior to _____, that do not conform to the use regulations of this Ordinance in the Zoning Districts in which such uses are located. Such uses are hereafter referred to as nonconforming uses*;* and

(2) Buildings and structures constructed prior to _____, that do not comply with the applicable property development standards of this Ordinance in the Zoning Districts in which such buildings or structures are located. Such structures are hereafter referred to as nonconforming structures*.*

(b) Authority to continue.

(1) Continuation of nonconforming use. A nonconforming use that lawfully occupies a structure or a vacant site on _____, may be continued so long as it remains otherwise lawful, subject to the standards and limitations of this section.

(2) Continuation of nonconforming structures. A nonconforming structure that lawfully occupies a land site on _____, that does not conform with the standards for front setbacks, side setbacks, rear setbacks, height, screening, floor area of structures, driveways or open space for the District in which the structure is located, may be used and maintained subject to the standards and limitations in this section.

(3) Amortization of nonconforming uses or nonconforming structures. A nonconforming use or nonconforming structure may be amortized by the City based on the following provisions:

a. The City provides adequate written notice to the owner of the impending amortization;

b. The City also provides sufficient time for the owner to procure an appropriate place to relocate;

c. The City offers just compensation for the value of the property, the costs associated with moving the use, and the loss of revenue due to the discontinuance of the use.

(c) Ordinary repair and maintenance. Normal maintenance and incidental repair may be performed on a conforming structure which contains a nonconforming use or on a nonconforming structure. This section shall not be construed to prevent the strengthening or restoration to a safe condition of a structure in accordance with an order of the City Administrator who declares a structure to be unsafe and orders its restoration to a safe condition.

Sec. 1-316. - Nonconforming uses—Abandonment.

(a) When abandoned. A nonconforming use of land or of a structure in a District that is discontinued or remains vacant for a continuous period of one (1) year shall be presumed to be abandoned and shall not thereafter be reestablished or resumed. Any subsequent use or occupancy of the structure or land site must conform with the regulations for the District in which it is located.

(b) Overcoming presumption of abandonment. The presumption of abandonment may be rebutted upon a showing, to the satisfaction of the Chief Building Official that during such period the owner of the land or structure has been:

(1) Maintaining the land and structure in accordance with the building code and did not intend to discontinue the use;

(2) Actively and continuously marketing the land or structure for sale or lease; or

(3) Engaged in other activities that would affirmatively prove there was not intent to abandon.

(c) Calculation of period of abandonment. Any period of such discontinuance caused by government actions, fire or natural calamities, and without any contributing fault by the nonconforming user, shall not be considered in calculating the length of discontinuance pursuant to this section.

Sec. 1-317. – Nonconforming uses—Movement, alteration and enlargement.

No nonconforming use may be moved, enlarged or altered and no nonconforming use of land may occupy additional land, except in the manner provided in this section.

(1) *Enlargement.* A nonconforming use may not be enlarged, expanded or extended to occupy all or a part of another structure or land site, that it did not occupy on the

effective date of the Zoning Ordinance, or any amendment thereto, from which the provision was derived.

(2) *Exterior or interior remodeling or improvements to structure.* Exterior or interior remodeling or improvements to a structure containing a nonconforming use shall be allowed provided there is no expansion of the nonconforming use.

(3) *Relocation of structure.* A structure containing a nonconforming use may not be moved unless the use shall conform to the regulations of the Zoning District into which the structure is moved.

(4) Destruction of structure with nonconforming use. If a structure that contains a nonconforming use is destroyed to the extent of fifty percent (50%) or more by fire or natural calamity or is voluntarily razed or is required by law to be razed, the nonconforming use shall not be resumed, and the structure shall not be restored. Unless the structure is a single family dwelling previously used for residential purposes; in which case the structure may be restored or replaced if the property owner obtains a special use permit under Sec. 1-283. The determination of the extent of damage or destruction under this section shall be based on the ratio of the estimated cost of restoring the structure to its condition before the damage or destruction to the estimated cost of duplicating the entire structure as it existed prior to the damage or destruction.

(5) Moving. A nonconforming structure shall not be moved, in whole or in part, for any distance whatsoever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the Zoning District in which it is located after being moved.

Sec. 1-318. - Nonconforming accessory uses and nonconforming accessory structures.

The continued existence of nonconforming accessory uses and nonconforming accessory structures shall be subject to the provisions governing principal nonconforming uses and nonconforming structures set forth in sections 1-316 and 1-317.

Sec. 1-319. - Determination of nonconforming use and nonconforming structure status.

The burden of establishing that a nonconforming use or nonconforming structure lawfully exists under this Ordinance shall, in all cases, be the owner's burden and not the City's.

Sections. 1-320—1-343. - Reserved.

ARTICLE VII. - ENFORCEMENT

Sec. 1-344. - Enforcement officer.
Sec. 1-345. - Compliance required.
Sec. 1-346. - Remedies and enforcement powers.
Sec. 1-347. - Enforcement procedures.
Sec. 1-348. - Other enforcement matters.
Secs. 1-349—1-369. - Reserved.

Sec. 1-344. - Enforcement officer.

This Ordinance shall be enforced by the City Administrator or designee, pursuant to V.T.C.A., Local Government Code § 211.012, or other applicable law.

Sec. 1-345. - Compliance required.

No person may use, occupy or develop land, buildings or other structures, or authorize or permit the use, occupancy or development of land, buildings or other structures, except in accordance with all the provisions of this Ordinance.

Sec. 1-346. - Remedies and enforcement powers.

The City shall have the following remedies and enforcement powers:

(1) *Withhold permits.* The City may deny or withhold all permits, approvals or other forms of authorization on any land or structure for which there is an uncorrected violation of a provision of this Ordinance or of a condition of a permit, certificate, approval or other authorization previously granted by the City Council, commission or Board of Adjustment. In lieu of withholding or denying an authorization, the City may grant such authorization subject to the condition that the violation be corrected.

(2) *Stop work.* With or without revoking permits, the City may stop work on any building or structure on any land on which there is an uncorrected violation of a provision of this Ordinance or of a permit or other form of authorization issued hereunder, in accordance with its power to stop work under its building codes.

(3) *Injunctive relief.* The City may seek an injunction or other equitable relief in court to stop any violation of this Ordinance or of a permit, certificate or other form of authorization granted hereunder.

(4) *Abatement.* The City may seek a court order in the nature of mandamus, abatement or other action or proceeding to abate or remove a violation or to otherwise restore the premises in question to the condition in which it existed prior to the violation.

(5) *Civil remedies.* The City shall have the right to institute any appropriate civil action to enforce, enjoin, prevent, restrain, correct or abate any violation of the provisions of this Ordinance, including any and all remedies available pursuant to the laws of the State. All court costs and reasonable attorney's fees incurred by the City in connection with any civil action shall be awarded to the City if it is the prevailing party.

(6) *Criminal remedies.* Any person that violates any provision of this Ordinance shall be guilty, upon conviction, of a separate misdemeanor offense for each day or portion of a day during which the violation continues.

(7) *Other remedies.* The City shall have such other remedies as are and as may be from time to time provided by State Law for the violation of Zoning regulations.

(8) *Remedies cumulative.* The remedies and enforcement powers set out in this section shall not be considered exclusive remedies but rather they shall be cumulative with all other remedies provided in this Ordinance, in any other Ordinance or by law.

Sec. 1-347. - Enforcement procedures.

The following procedures shall be followed in carrying out enforcement powers:

(1) *Notice.* The Chief Building Official shall give written notice by certified mail to the owner of land on which a violation exists. The notice shall state the nature of the violation and the date, time and place of the Board of Adjustment meeting at which the board is to act on the enforcement matter.

(2) *Board of Adjustment action; Public Hearing.* After due notice, the Board of Adjustment shall hold a Public Hearing on the Zoning violation. At the Public Hearing, the board shall consider the staff report detailing the nature of the violation, the relevant support materials and the public testimony given at the Public Hearing, including the testimony of the owner of the land on which the violation is said to exist. After the close of the Public Hearing, the Board of Adjustment shall determine, by a vote of its members, if a violation exists. If a violation is determined to exist, the Board of Adjustment shall identify the appropriate remedy and enforcement action.

(3) *Notice of decision.* The Chief Building Official shall provide a copy of the board's decision and enforcement action to the applicant by certified mail within ten (10) days of the board's decision.

Sec. 1-348. - Other enforcement matters.

(a) Other powers. In addition to the enforcement powers specified in this article, the City may exercise any and all enforcement powers granted to it by State law, as it may be amended from time to time.

(b) Continuation. Nothing in this Ordinance shall prohibit the continuation of previous enforcement actions, undertaken pursuant to previous, valid resolutions, ordinances and laws.

Sections. 1-349—1-369. - Reserved.

Sec. 1-370 - Penalty.

Any person who violates or causes, allows, or permits another to violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than Two Thousand Dollars ($2000.00). Each occurrence of any such violation of this Ordinance shall constitute a separate offense. Each day on which any such violation of this Ordinance occurs shall constitute a separate offense.

PASSED, **APPROVED and ADOPTED** this, the _____ day of _____, 2012.

_____

Thomas C. Kuykendall, Jr., Mayor

ATTEST:

_____

D. Gordon Offord, City Secretary